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The Relationship between Liberalism and Conservatism: Competitive, Symbiotic or Parasitic?

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Abstract

The thesis argues that the relationship between liberalism and conservatism is closer than is commonly supposed. Though the 'triumph of liberalism' - whether intellectual or political - is a commonplace it in fact rests on a conceit: liberalism's claim to be able to provide a publicly justified morality founded on the ideas of rationality, tolerance and autonomy. That is the root of, to quote MacIntyre, 'the spectre haunting contemporary liberal theorists [which] is not communitarianism, but their own irrelevance'.¹ I shall argue that this irrelevance is neither the result of liberal theorists' inadequacies nor a corollary of the exigencies of contemporary politics. Rather, it is a structural inevitability. For liberalism can justify its values only by resorting to a conservative axiology. The thesis delineates three strands of liberalism, classical liberalism, libertarianism and perfectionism. I argue that the problem that all these liberalisms have in common is that they all need to use a conservative form of argument to justify liberal norms of rationality, autonomy and tolerance.

The origin of this dilemma lies in the nature of liberalism itself. Since liberalism's emergence as a self-conscious form of political discourse it has been founded on a particular view of how people are. Liberal doctrines about the social and political obligations of individuals are derived from the view of man (*sic*) as a rational choosing individual. However, such individuals are historical artefacts and their flourishing depends on a precise set of historical circumstances. I argue, therefore, that the various species of liberalism examined in this thesis all advocate – to a greater or lesser extent – conservative political prescriptions in defence of the matrix of institutions, laws, manners and *mores* which allow liberal individuality to flourish.

¹ Alasdair MacIntyre, 'The spectre of communitarianism', *Radical Philosophy*, 70, 1995, pp 34-7, p35.

Endnotes and Bibliography

The first time a book is cited in the text full publication details are given in the endnote at the end of each chapter. From the second citation onwards just the author and the name of the book are used. Publication details can also be found in the bibliography. Books and journal articles are listed alphabetically by author.

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Chapter 1

Introduction

Liberal political discourse dominates contemporary political thought. Nonetheless liberals themselves recognise that much of the discourse is profoundly unsatisfactory. Liberalism is founded on the notion that individuals are moral persons capable of putting aside personal valuing and instead acting on norms which can be justified to all. If liberals lose faith in the existence of such an objective morality then their self-understanding will be undermined. Western liberal societies would then lose what they hold to be essential – a publicly justified morality founded on the ideas of rationality, tolerance and autonomy. The attempt, therefore, to justify liberalism, to whatever extent it can be justified has become central to the liberal enterprise. This thesis will argue that, in order to justify itself, liberalism draws upon a conservative epistemology or form of argument which inevitably leads to a substantive conservative political position.

One of the most comprehensive attempts to justify liberalism is offered by Gerald Gaus's 1990 work *Value and Justification: The Foundations of Liberal Theory*¹. However, in his later book *Justificatory Liberalism*,² Gaus notes:

I assumed that further work would yield more specific political principles, a justification of certain political institutions, and, indeed policy prescriptions of various sorts. This proved mistaken. As I try to show in this book, the public justification of a public morality has great difficulty advancing beyond abstract principles. Because of this, the further work that was required was not ... more detailed public justifications – the arguments for which were manifestly inconclusive – but an analysis of how political institutions cope with this inconclusiveness.³

This quotation demonstrates the dilemma at the heart of liberalism and the dilemma which I shall explore in this thesis. Despite over a hundred years of effort by liberal philosophers there is still no publicly justifiable account of morality founded on notions of rationality, autonomy and tolerance which is acceptable to all liberals. This problem of justification lies at the core of the current debate between communitarian and deontological liberals. Deontological liberals such as the earlier Rawls and Nozick try to provide a universal, objective justification of the liberal order. They attempt to find a basis for human association which all people can accept irrespective of cultural religious or ethnic background. By contrast, communitarian liberals such as Sandel, Taylor and Rorty argue that liberalism is valuable only in the context of the societies which gave it birth: people living in existing liberal communities have found living autonomous lives valuable and as a result they seek to widen and deepen the autonomy enjoyed in liberal societies. For them that is justification enough. Finally, writers such as Joseph Raz, Gerald Gaus and the later Rawls have attempted to retain ideas of objectivity and rationality whilst at the same time recognising that liberalism must nonetheless be a localist doctrine.

I shall argue that at the core of the problem lies an intellectual crisis caused by the inability of liberals to establish objective foundations for fundamental liberal values such as freedom, autonomy and rationality once the metaphysical religious foundations implicitly adopted by early liberal theorists such as Locke had failed. In its political discourse the intellectual crisis of liberalism emerges as the dichotomy between communitarian and deontological strands of liberal thinking. However, what has not been noted is that the other result of this intellectual crisis is the extent to which both deontological and communitarian liberals have come to depend on an implicitly conservative form of argument in defence of those values.

This might seem an odd idea. After all conservatism in its traditional sceptical guise is the

opposite of liberal attitudes to the possibility of rational improvement. It is, however, this form of conservative argument that I shall argue is currently being used by deontological and communitarian liberals to shore up liberalism's failure to establish the objective foundations it needs. It is, of course, important first to establish precisely what is meant by the claim that contemporary liberals use the form of arguments – at the very least – with which conservatives have traditionally defended established values and practices. This claim goes beyond the most obvious similarity between 19th Century liberalism and the conservatism embodied in that strand of contemporary Conservatism known as the New Right. The New Right adopts some, but not all of the doctrinal features of classical liberalism, especially its emphasis on liberty, free trade and the market economy. However, despite that resemblance this is not the type of conservatism that I have in mind. New Right Conservatism is itself best viewed as a species of liberalism, closely akin to the Manchester liberals of the earlier nineteenth century and their proto-liberal economics: in short as a neo-liberalism. Indeed contemporary liberals such as Hayek and Nozick are frequently categorised as New Right thinkers,⁴ and many commentators on the New Right have themselves categorised it as a predominantly liberal mode of discourse, an amalgam of Austrian liberal economic theory (Von Mises and Hayek), extreme libertarianism (anarcho-capitalism), conservative state authoritarianism and crude populism.⁵ The neo-liberal nature of the New Right is made even more explicit in the apologia by David Green,⁶ who widens the liberal dimension to include the Friedmanite Chicago School and the ideas of the Virginia public choice school. But that is not the connection I have in mind.

Let me therefore make it clear exactly what I am claiming when I suggest that both deontological and communitarian liberals adopt implicitly sceptical conservative arguments. Sceptical conservatism is based on prejudice in favour of what already exists. It is not reactionary in the sense of desiring a return to some utopian, idealised version of a non-

existent past. Instead, such conservatism holds that human beings and the societies they create are invariably imperfect and will always be so; that the power of human reason is limited; and therefore any plans for brave new worlds are inevitably doomed to failure. Burke, in many ways the exemplar of this style of conservatism, explained the problem of reason thus:

We are afraid to put men to live and trade each on his own private stock of reason; because we suspect that in each man this stock is small, and that the individuals would do better to avail themselves of the general bank and capital of ages. Many of our men of speculation, instead of exploding general prejudices, employ their sagacity to discover the latent wisdom which prevails in them. If they find what they seek and they seldom fail, they think it more wise to continue the prejudice, with the reason involved, than to cast away the coat of prejudice, and to leave nothing but the naked reason; because prejudice, with its reason has a motive to give action to that reason, and an affection which will give it permanence.⁷

This conservatism emerged in the 18th and 19th centuries in response to the enthusiasm of Enlightenment rationalism. In other words, it emerged in response, and in opposition to, the movement which gave birth to liberalism. It argues firmly that the capability of human rationality to reshape the world according to some 'right plan' is limited by the inability of human reason to comprehend and take into account the extreme complexity of human society. It argues that human beings should instead recognise the value and utility of what already exists, and should therefore maintain the *status quo* for fear of making social conditions worse rather than better. Change should occur only in response to clear and major abuses; where possible it should be incremental; and it should always be in tune with existing customs and practices. It is the form of conservatism present in the thought of David Hume, some works of Edmund Burke and in the 20th century in the ideas of Michael Oakeshott. This scepticism is rarely attached to any particular institution or practice. Rather it is what Samuel Huntington described as a positional ideology: 'when the foundations of society are threatened, the conservative ideology reminds men of the necessity of some institutions and the desirability of the existing ones.'⁸ Or as Oakeshott has it:

To be conservative, then, is to prefer the familiar to the unknown, to prefer the tried to the untried, fact to mystery, the actual to the possible, the limited to the unbounded, the near to the distant, the sufficient to the superabundant, the convenient to the perfect, ... Familiar relationships and loyalties will be preferred to the allure of more profitable attachments; to acquire and enlarge will be less important than to keep, to cultivate and to enjoy.⁹

It is this form of conservative argument - sceptical, traditionalist pragmatic and anti-rationalist - that I shall identify as being made use of by contemporary deontological and communitarian liberal theorists. The dominant mode is anti-rationalism:

Rationalism in politics ... involves identifiable error, a misconception with regard to the nature of human knowledge, which amounts to a corruption of the mind. And consequently it is without the power to correct its own short-comings ...; you cannot escape its errors by becoming more sincerely or more profoundly rationalistic. This ... is one of the penalties of living by the book; it leads not only to specific mistakes, but it also dries up the mind itself: living by precept in the end generates intellectual dishonesty.¹⁰

Nothing could be further from the belief that society can and should be re-ordered according to objective and explicitly justifiable principles.

Nonetheless, this is precisely the form of argument adopted by the American liberal Richard Rorty. Rorty is customarily associated with the Left in American politics, but he adopts metaphors and approaches in his philosophy which have been more usually associated with the Right:¹¹ rejecting the liberal search for foundations, and accepting that liberalism is inevitably a matter of 'how we do things here'¹² - a conventionally conservative position - his left-liberal commitment stands in contradiction to his epistemological position.¹³ My claim is that this turns out to typify not just what Rorty describes as 'Postmodernist Bourgeois Liberalism'¹⁴ but in fact more mainstream liberalism. First let me say a little more about that epistemological position itself. Here is how he characterises it:

[T]o say that convictions are only 'relatively valid' might seem to mean that they can only be justified to people who hold certain other beliefs - not to anyone and everyone. But if this were what was meant, the term would have no contrastive force, for there would be no interesting statements which were *absolutely* valid. Absolute validity

would be confined to everyday platitudes, elementary mathematical truths, and the like: the sort of beliefs nobody wants to argue about because they are neither controversial nor central to everyone's sense of who she is or what she lives for. All beliefs which *are* central to a person's self-image are so because their presence or absence serves as a criterion for dividing good people from bad people, the sort of person one wants to be from the sort one does not want to be. A conviction which can be justified to *anyone* is of little interest.¹⁵

Moreover, the search for such foundations, he argues, is no more than a descent into metaphysics or theology:

This book [*Contingency, Irony and Solidarity*] tries to show how things look if we drop the demand for a theory which unifies the public and private, and are content to treat demands of self-creation and of human solidarity as equally valid, yet forever incommensurable. It sketches a figure whom I call the 'liberal ironist.' Liberal ironists are people who include among ... ungroundable desires their own hope that suffering will be diminished, that the humiliation of human beings by other human beings may cease. For liberal ironists, there is no answer to the question 'Why not be cruel?' - no noncircular theoretical back up for the belief that cruelty is horrible. Nor is there an answer to the question 'How do you decide when to struggle against injustice and when to devote yourself to private projects of self-creation?' Anybody who thinks that there are well-grounded theoretical answers to this sort of question - algorithms for resolving moral dilemmas of this sort - is still, in his heart, a theologian or a metaphysician. He believes in an order beyond time and change which both determines the point of human existence and establishes a hierarchy of responsibilities.¹⁶

Rorty's position is epistemologically conservative. He declares:

...'moral principles' (the categorical imperative, the utilitarian principle, etc.) only have a point insofar as they incorporate tacit reference to a whole range of institutions practices, and vocabularies of moral and political deliberation. They are reminders of, abbreviations for, such practices. At best, they are pedagogical aids to the acquisition of such practices.¹⁷

Compare this with Oakeshott, who insists that

[P]olitical enterprises, the ends to be pursued, the arrangements to be established (all the normal ingredients of a political ideology), cannot be premeditated in advance of a manner of attending to the arrangements of a society; *what* we do, and moreover what we want to do is the creature of *how* we are accustomed to conduct our affairs. Indeed, it often reflects no more than a discovered ability to do something which is translated into an authority to do it.¹⁸

While liberals see practice as having to conform to theory, Oakeshott – and Rorty – claim the reverse, and the substance of that claim – the primacy of practice over theory and the

contingency of circumstance - has been fundamental to conservative theory since Burke. In the *Reflections on the Revolution in France*, for instance, he makes a statement with which both Rorty and Oakeshott would immediately concur:

[T]he science of constructing a commonwealth, or renovating it, or reforming it, is, like every other experimental science, not to be taught *a priori*. Nor is it a short experience that can instruct us in the practical science; because the real effects of moral causes are not always immediate; but that in which the first instance is prejudicial may be excellent in its remoter operations; and its excellence may arise even from the ill effects it produces in the beginning.¹⁹

Oakeshott, Rorty and Burke all have a predisposition in favour of established arrangements, and agree on the importance of contingent judgements in political and moral considerations.

It is no surprise, then, that Rorty explicitly allies his thinking on these matters to Oakeshott. Rorty first drew on Oakeshott's ideas in *Philosophy and the Mirror of Nature*,²⁰ where he uses his metaphor of conversation to explain how he believes philosophical issues, whether moral or political, should be discussed:

[I]f we see knowing as not having an essence, to be described by scientists or philosophers, but rather as a right, by current, standards to believe, then we are well on the way to seeing *conversation* as the ultimate context within which knowledge is to be understood. Our focus shifts from the relation between human beings and the objects of their inquiry to the relation between alternative standards of justification, and from there to the actual changes in those standards which make up intellectual history.²¹

Rorty develops more fully his interpretation of Oakeshott's thought with respect to moral theory in *Contingency, Irony and Solidarity*.²² In that work, Rorty praises Oakeshott for helping to undermine 'the idea of a transhistorical 'absolutely valid' set of concepts which would serve as 'philosophical foundations' of liberalism'.²³ He cites Oakeshott approvingly when the latter likens morality to a language that has to be learned rather than a set of general principles; rather it is moral principles or precepts which are derived from the language. Indeed Rorty's overall conception of morality parallels that of Oakeshott very closely:

[W]e can keep the notion of 'morality' just insofar as we can cease to think of morality as the voice of the divine part of ourselves and instead think of it as the voice of ourselves as members of a community, speakers of a common language. We can keep the morality-prudence distinction if we think of it not as the difference between an appeal to the unconditioned and an appeal to the conditioned but as the difference between an appeal to the interests of our community and the appeal to our own, possibly conflicting, private interests. The importance of this shift is that it makes it impossible to ask the question 'Is ours a moral society?' It makes it impossible to think that there is something which stands to my community as my community stands to me, some larger community called 'humanity' which has an intrinsic nature.²⁴

Compare this with Oakeshott's idea of what a morality should be:

A morality is neither a system of general principles nor a code of rules, but a vernacular language. General principles and even rules may be elicited from it but (like other languages) it is not the creation of grammarians; it is made by speakers.²⁵

Rorty actually invokes Oakeshott's notion of *societas*²⁶ - that is, his view of the state as association in terms of a non-instrumental practice - as the ideal model of the liberal state. Oakeshott is of course seen as a somewhat politically liberal conservative, and his notion of *societas* as a purposeless state which allows individuals to be truly free clearly has liberal elements. However, Oakeshott's insistence on the primacy of practice over theory is the epistemologically conservative core of his thought and it is this notion that Rorty has adopted.

Moreover, the notion of the constitutive nature of communities in establishing morality is not confined simply to a contemporary (and somewhat liberal) conservative such as Oakeshott: exactly the same theme is apparent in Burke, when he points out the importance of affection for the locality and family as the 'first principle (the germ as it were) of public affection'.²⁷ This is a fundamental element in conservatism, which Burke clearly expresses in a famous section of the *Reflections*:

[W]e begin our public affections in our families. No cold relation is a zealous citizen. We pass on to our neighbourhoods, and our habitual provincial connections. These are inns and resting-places. Such divisions of our country as have been formed by habit, and not by a sudden jerk of authority, were so many little images of the great country

in which the heart found something which it could fill. The love to the whole is not extinguished by this subordinate partiality.²⁸

Even more significant in this context is Rorty's justification of this liberal society: '[I]t is a society whose hero is the strong poet and the revolutionary because it recognizes that it is what it is, has the morality it has, speaks the language it does, not because it approximates to the will of God or the nature of man but because certain poets and revolutionaries of the past spoke as they did.'²⁹ This is a conservative invocation of the desirability of adhering to a tradition simply because it is ours which exactly parallels the way in which for example, Burke lauds the value of prejudice in favour of what already exists. In his criticism of enlightenment rationalists – the forerunners of liberal theory – Burke states:

They have no respect for the wisdom of others; but they pay it off by a very full measure of confidence in their own. With them it is a sufficient motive to destroy an old scheme of things because it is an old one. As to the new, they are in no sort of fear with regard to a building run up in haste; because duration is no object to those who think little or nothing has been done before their time, and who place all their hopes in discovery.³⁰

But, as we have seen, such reference to, and reliance on the authority of tradition is also what characterises the ultimate result of Rorty's position, abandoning as he does the quest for any rational coherent foundations for liberalism.

The political problem of liberalism's quest for foundations (and hence its present descent into ever more localist justifications of liberal values, the possibility of foundations having been largely abandoned) parallels the way the liberal intellectual crisis has been interpreted in moral philosophy by Onora O'Neill. O'Neill³¹, has pointed out that the loss of metaphysical and religious foundations has led to a split in ethical theory expressed by the current dichotomy between predominantly universalist conceptions of justice and predominantly particularist conceptions of ethics. In the history of ideas framework offered in *Towards Justice and Virtue* O'Neill argues that the divergence between justice and virtue

in contemporary philosophy - and hence the current crisis in western moral philosophy - occurred because they drifted apart in their attempts to cope with the loss of metaphysical, i.e. religious foundations by unsuccessful resort to a naturalism, whose content was in fact derived from religion, to ground ethics. When the religious sources of the science of man are no longer invoked, what started as objective goods are transformed into subjective goods. As O'Neill notes:

[O]ne tempting belt and braces strategy ... is to present the Science of Man itself as founded on metaphysical certainties, for which it can then provide a more accessible and congenial surrogate. If it can be shown, for example, that human desires are generally beneficent, or that the moral sense discerns the good, or that happiness is the measure of all value, then the foundations for a universalist position will be secure. Once one has a belt it may be tempting to discard the braces - particularly if one fails to notice that only the braces are keeping the belt securely in position. At some point (but not anywhere one could pinpoint) the old metaphysical and religious certainties are no longer invoked to provide the foundation of a conception of human nature, which is then supposed to support ethical thinking without independent backing. At that point the emperor's clothes may fall away. In place of an account of the objective good, a subjective account of the good may be called upon to provide the basis for ethical thinking.³²

This is accompanied by new conceptions of human action and the human subject. Some aspects of this new philosophical landscape, for instance the idea that happiness is the measure of all value, are hospitable to universalist ethics and justice; other aspects to particularist ethics and virtue, for instance the notion that morals are relative to time and place. Faith in the ability of the sciences of man to supply ethics with the necessary foundation then crumble, because a historicised conception of the human subject declares that there can be no such thing as a natural - that is, an ahistorical - science of man. A particularist ethics, therefore, allows convincing explanations of virtue, but leaves no room for the universalism that justice requires. In the second instance it has occurred because of the development of a minimalist naturalism in the shape of revealed preference theory which trivialises the good and thereby makes it incapable of supporting a substantive ethics. This allows a non-empty account of justice - but not of virtue; hence the split between the ethics

of justice and the ethics of virtue. Justice and virtue are sundered by being supported by different trends in current thought, which offer informative theoretical explanations of one but not the other, and so cannot succeed in providing practically adequate foundations both together. According to O'Neill, then:

...the common fate of discussions of justice and virtue has been a loss of those supposed metaphysical or religious certainties on which the whole of ethics has been overtly or tacitly based. The unexplained divergence in the way the two domains of ethics are now discussed may reflect the mere reality that neither is firmly anchored. It has been tempting to continue to think of justice in universalistic terms because the broad scope and close-to-cosmopolitan tasks of justice are so important in the modern world. It has been tempting to think of virtue in particularistic terms because other approaches seem not merely unavailable but questionable in a culturally diverse world. If the crisis of foundations is to be taken seriously there is little to be said for succumbing to either temptation. There is little to be said on behalf of inclusively universal principles, including those of justice unless they can be based on convincing practical reasoning, which either sustains or replaces justifications once based on metaphysical or religious certainties. There is little to be said on behalf of particularist conceptions of the virtues unless convincing reasons can be found, which show why appeals to shared traditions or to individual sensibilities justify ethical claims. In the end divergence between justice and the virtues can best be seen neither solely as a response to social change, but as alternative ways of reacting to a shared intellectual crisis.³³

This is a problem for liberalism because the enlightenment project from which liberalism developed boldly attempted to provide realist foundations for the good. As O'Neill notes:

[I]n place of an account of the *objective* good, a *subjective* conception of the good may be called on to provide the basis for ethical thinking. For example, in many utilitarian hands happiness is seen as a subjective good, and further proof of its goodness is not required, or at any rate not offered. Just institutions are those which do most to secure human happiness; virtues are psychological propensities that tend to maximise happiness. A revised universal account of justice and virtue can then be defended as derivable from claims about human desires and happiness, *provided that a subjective account of the good is accepted*. A new science of man will supposedly serve when the old metaphysics of the good fails. However, if no science of man can be established to replace metaphysical and religious certainties, or if the goodness of human happiness, or of other conceptions of natural or even primary goods can be called into question the inclusive universal ethical principles - of justice as well as of virtue - will be put into question.³⁴

The rejection of metaphysical accounts of the good leads to an intellectual crisis 'in naturalising the basis of action, reason and freedom are all metamorphosed, and many

conclusions which were thought to be reached by relying on the earlier conceptions may prove inaccurate or lack analogues.¹³⁵

O'Neill recognises that much of this is speculation. However, if she is correct then questions are raised about how the core liberal value of freedom is to be justified. Freedom, as liberals originally formulated it, was conceived not as licence but as perfect rationality capable of discerning the moral law, as exemplified in Kant's insistence that the freedom is a property of the rational will:

Will is a kind of causality belonging to living beings insofar as they are rational. Freedom would then be the property this causality has of being able to work independently of determination by alien causes: just as natural necessity is a property characterizing the causality of all non-rational beings – the property of being determined to activity by the influence of alien causes.³⁶

Behind this is the traditional conception of the virtuous man as freed from enslavement to the passions and so able to follow the path of reason toward objective good. But when the good is naturalised into subjective preference satisfaction it becomes impossible to make *this* decision between freedom and unfreedom because rationality becomes (as in Hume) no more than instrumental reason in the service of the passions. In effect freedom becomes *subject to* the passions. What then is its value?

O'Neill is concerned with the justification of moral values once the metaphysics on which classical liberalism implicitly rested is no longer accepted. As Gaus³⁷ has shown there is a need for the same sort of justification with respect to liberalism. Nor is this surprising; the crisis in attempting to discover what is morally good emerged at the same time and from the same intellectual process as that in respect of what is or is not valuable politically. Just as in O'Neill's analysis of moral philosophy two forms of justification have emerged in liberal political philosophy. On the one hand, there are the universalist, or deontological,

justifications in the thought of writers like the earlier Rawls, Nozick, Dworkin and Hayek; on the other, particularist or communitarian justifications in the thought of Sandel, Taylor and Rorty.

The divergence between universalist and particularist justifications of liberal value - i.e. between deontological and communitarian liberal theory - is an example of the same phenomenon in political philosophy as O'Neill has identified in ethical theory as the rivalry between justice and virtue. She describes it thus:

[N]early all contemporary writing on justice virtue is universalist: it advocates universal and abstract principles. Much contemporary writing on virtue is particularist: it criticizes both abstraction and universality and interprets virtue as a matter of judging and responding to particular situations and relationships. Theories of justice argue for universal rights and obligations; virtues are seen as the time- and context-bound excellences of particular communities and lives.³⁸

In the same way, liberalism is divided between those who advocate universalist justifications for liberal freedom and those who claim that such values can be justified only with recourse to the claims of local and particularist traditions. Yet, as I shall show, this dichotomy is more apparent than real. O'Neill's model helps us to see that, rather than there being an inbuilt meta-ethical split between deontological liberals and communitarians, their approaches turn out, in fact, to be complementary ways of justifying the same *particularist* morality.³⁹ In terms of the substance of their prescriptions there is little difference between a communitarian like Rorty and a deontological liberal like Rawls or Dworkin. However, it is the justificatory dimension where the complementary nature of the two dimensions of liberalism are even more apparent. Ironically or otherwise, deontological liberals are reliant on localist and particularist arguments no less than communitarian liberals, implicit rather than explicit though that remains. Thus, for example, Rawls' 'universal individual' in the original position is in fact the liberal individual of western liberal democracies who sees a common good being established in a society only by ensuring that individuals can get as

much as possible of what they want commensurate with others getting what they want.

Brecher notes that this conception runs counter to classical liberalism:

The explicitness of Rawls' general claim, that individuals consist in their wants, is usefully revealing, since it runs contrary to liberalism's classical commitment to the metaphysics-denying metaphysics of empiricism: whereas for Hobbes 'human nature' would describe the mechanism of being human, for Rawls it refers also to things in the world towards which such a mechanism is directed. Hobbes' 'wanting thing' is perhaps analogous to a pendulum being a swinging thing; while Rawls' 'wanting thing' is analogous to a pendulum's being a swinging thing inasmuch as it is part of a clock.⁴⁰

In other words, Rawls can apply his abstract reasoning only to a world of existing liberal individuals, a point he makes explicit in his later work *Political Liberalism*; and it is this particularist morality which, as I shall show in later chapters, forms the basis of the liberal use of conservative forms of argument to defend liberal values.

This presents a fundamental problem for liberal theory, in that the inability to ground liberal values other than conservatively has led to an abandonment, or at least an undermining, of liberal values themselves. The original core liberal value is that of freedom; that is to say, freedom from external coercion. This is the substance of the liberal belief in the central importance of autonomy; of neither being dominated by internal coercion from the passions or, externally, by the arbitrary will of others. Philosophical pressures - specifically the demand to justify the core liberal value of freedom - have turned liberals illiberal in two ways: they have lost touch with the core liberal value of freedom and they have turned to conservative modes of thought.

Originally the moral value of freedom as it emerged with writers like Locke was underpinned by the Calvinist religious idea that people needed freedom to behave morally, so that they could be identified as the elect of God. Once this - or indeed other metaphysical and religious foundations - was no longer widely accepted, liberalism was left with a type of

empiricism as its sole foundation; a type of empiricism where freedom became freedom simply to satisfy desire without external interference, i.e. to be at the mercy of the passions, and where the only common good of society is to establish a set of rules which would allow individuals pursue their own interests. As Gerald Gaus states:

Although classical liberalism is itself very diffuse, I think that it is safe to say that the liberalisms articulated by Locke and James Mill, as different as they are, share a vision of men as essentially independent, private and competitive beings who see civil association mainly as a framework for the pursuit of their own interests.⁴¹

These interests may be pursued, according to deontological liberals, insofar as they do not harm or seriously disadvantage others; or, according to communitarian liberals, they may be pursued as long as they do not contravene a series of prescriptive local 'goods'. But these are very different conditions for the pursuit of interests.

The idea of freedom as simply freedom to pursue appetites has led some liberals to place almost as much emphasis on value neutrality as they do on freedom: if all appetites have equal value, provided they do not harm others, then the state, or society, cannot promote one set of values ahead of another because to do so would diminish the autonomy of individuals in establishing and pursuing their own values.

The situation is further confused by the fact that the notion of liberal value neutrality can be interpreted in a number of different ways.⁴² It can refer to neutrality of justification - that political and social actions and procedures should not be justified or undertaken on the grounds that they promote some particular conception of the good; or to neutrality of effect - that they should not have the effect of promoting one conception of the good over another. The neutrality that liberals customarily defend is neutrality of justification. However, while the competing definitions of neutrality noted above are widely recognised, there has been less discussion of the site of neutrality: that is, of whether it is specific laws and decisions,

political institutions, economic and social institutions, or all three that are to be neutral. To take just one example, for the moment, the advocacy of neutrality; Dworkin, assuming liberal neutrality to concern governmental decision, has characterised liberalism in the following way: 'political decisions must be, so far as possible, independent of any particular conception of the good life, of what gives value to life'.⁴³ However, as John O'Neill notes:

Neutrality is often, however, extended beyond specific decisions to include political procedures and constitutional arrangements: a liberal polity is one that is procedurally neutral between different conceptions of the good life. [N]eutrality can also be extended to include a society's basic economic arrangements.⁴⁴

O'Neill's last point is especially important, as a central component of recent liberal arguments in defence of the free market is that the free market is a procedurally neutral device through which consenting adults can, by way of free contractual agreements, pursue their own conceptions of the good life. Any interference by political institutions in the workings of the market can then be regarded as an instance of the state's departing from the neutrality to which it should be committed; because, then, the foundation of many defences of neutrality is a concern that the state should not impose a particular conception of the good life by decree or law, it is assumed that the critic of neutrality is concerned to reject neutrality at the level of political decisions. For example, a governmental decision to remove value-added tax on computer software while imposing or increasing it on books sends the message that the government values computer activities more than reading and is using its power to encourage, and - depending on the level of tax imposed - possibly to compel individuals to use computers rather than read books. However, most versions of perfectionism have been concerned with the nature of political and social institutions rather than with specific laws. Mill, for example, frames the issue in terms of institutions: 'the first question in respect to *any political institutions* is, how far they tend to foster in members of the community the various desirable qualities moral and intellectual'.⁴⁵ Thus for Mill, and indeed for a contemporary perfectionist such as Raz,⁴⁶ institutions and procedures must be

neutral only insofar as they do not directly compel citizens to behave in ways which may be locally regarded as good. But it is definitely legitimate for states indirectly to encourage individuals to choose only between worthwhile choices through taxation of the bad and subsidy of the good.

Developments in the thought of John Rawls, the leading liberal philosopher of the late 20th century, indicate the seriousness of these problems. In response to critiques, such as those of Walzer and Sandel,⁴⁷ Rawls has shifted his position, most notably in *Political Liberalism*,⁴⁸ from one where he argues that his model of justice as fairness is universal and neutral between all competing conceptions of the good, to one where the neutrality claim is specifically limited to rational procedures: the claim to universal applicability on the basis of its supposed value-neutrality is dropped. In one sense, dropping universalism means that the liberal claim to neutrality does not need to be comprehensive, a point Rawls in effect concedes in *Political Liberalism*:

[P]olitical liberalism assumes that, for political purposes, a plurality of reasonable yet incompatible comprehensive doctrines is the normal result of the exercise of human reason within the framework of the free institutions of a constitutional democratic regime. Political liberalism also supposes that a reasonable comprehensive doctrine does not reject the essentials of a democratic regime. Of course, a society may also contain unreasonable and irrational, and even mad, comprehensive doctrines. In their case the problem is to contain them so that they do not undermine the unity and justice of society.⁴⁹

Rawls here is granting that within a liberal polity, ethical agreement about the foundations of a liberal society is improbable, and radical disagreement possible. But instead of invoking liberal neutrality regarding the politics of illiberal minorities, he suggests such illiberal minorities should be contained in order to prevent them undermining liberal values. In effect, Rawls, in *Political Liberalism*, recommends the types of prescription advocated by Richard Bellamy, who seeks to develop a form of liberalism stripped of ethical pretensions.⁵⁰ However, the problem of liberal non-neutrality extends far more widely than Rawls and

Bellamy: it is endemic throughout the history of liberalism, as the emergence of the 'new liberalism' of Green and Hobhouse shows; and in contemporary liberalism it presents a problem for perfectionist liberals such as Joseph Raz. Moreover, liberalism turns out not only to be not neutral about forms of the good life, the point conceded by Rawls: in the end it resorts to conservative forms of justifications of the liberal order. Rawls uses a conservative epistemology to defend liberalism and as a result endorses conservative political prescriptions. For example, again in *Political Liberalism*, Rawls recognises the limits placed on political philosophy by historical conditions and by political practice:

I also hold that the most appropriate design of a constitution is not a question to be settled by considerations of political philosophy alone, but depends on understanding the scope and limits of political and social institutions and how they can be made to work effectively. These things depend on history and how institutions are arranged.⁵¹

Far from calling on liberalism's usual preference of reason over tradition, Rawls here seems to suggest that cautious pragmatism is a better guide to constitutional design than bold applications of theory - a typically conservative form of argument. Compare, for example, Roger Scruton's encomium on the durability of the English constitution:

...the English constitution was...durable precisely because it was never written down, because it never tried to anticipate conflict but only to remedy it, because it never set up an absolute standard or an all-comprehending power but only a network of courts and chambers and councils, in which individual interests could be represented and reconciled. It grew as the common law grew, in answer to the local needs of an intensely localised community.⁵²

Neutralist liberals (including Rawls himself in the *Theory of Justice*) claim that the 'right is prior to the good'.⁵³ Moreover, because neutrality with regard to the good is implied by the right's being prior to it, liberalism typically maintains that it is both genuinely autonomy-respecting as to ethics, and universally applicable as to politics. At the very least procedural neutrality is required to make these claims justifiable. If any system is to be autonomy respecting with regard to ethics, and hence universally applicable in terms of politics, it must adopt ethical and political prescriptions that do not impose a specifically 'liberal'

version of the good on individuals. However, liberals can adopt neutrality in this sense only if they abandon their core value of freedom as autonomy – an ideal which cannot be defended on a neutralist basis, as Rawls makes clear in *Political Liberalism*. This then leaves liberals with the problem of how to justify their values. It is this problem that leads them to abandon the claim to neutralism – with respect to ensuring that political institutions and practices do not promote a specific vision of the good life - and adopt instead conservative forms of argument. In order to show how this has been the case, liberalism's 'official case' notwithstanding, I shall examine the work of three paradigmatic liberal thinkers: Friedrich Hayek, Josph Raz and John Stuart Mill.

Mill, in terms of the argument I sketched earlier is a universalist rather than a communitarian liberal. He attempts to use the subjective value of happiness in order to develop a moral theory which is valid for all times and all places. He attempts to put morality on a firm foundation with his effort to develop utilitarianism as a theory that claims, although happiness is a subjective value, it can be universally empirically justified. Classical utilitarianism teaches that the end of human conduct is happiness and that consequently the discriminating norm which distinguishes conduct into right and wrong is pleasure and pain. In the words of Mill himself,

the creed which accepts as the foundation of morals, utility or the greatest happiness principle, holds that actions are right in proportion as they tend to promote happiness, wrong as they tend to produce the reverse of happiness. By happiness is intended pleasure and the absence of pain; by unhappiness, pain and the privation of pleasure.⁵⁴

This pushes Mill towards a classical liberal view of freedom in that there are no objective criteria for what produces happiness other than achieving desires; the best way for people to achieve happiness is to decide for themselves what makes them happy and to be left alone to pursue those particular goals. However, Mill is not content with such an unqualified utilitarian view and extends it to cover not simply the quantity of happiness but also the

quality: hence Mill's much derided notion of the higher pleasures. This position is significant for Mill's justification of liberalism's core value of liberty, however, because he is attempting to defend the idea of freedom as moral freedom to make rational choices rather than the classically utilitarian view of freedom to pursue any subjective happiness whatever. This betrays a tension in Mill's thought, and indeed in the thought of liberals generally: on the one hand they use an empiricist basis for liberty which requires the state or other institutions to remain neutral, whilst on the other, they often also advocate the idea of moral freedom, that is to say freedom to make rational choices. Mill tries to square this particular circle with the notion of 'higher pleasures' – itself of course a conservative notion inasmuch as what counts as 'higher' is decided on the basis of those whose experience is widest, namely, in practice those most imbued with the values of the cultural *status quo*.

A similar difficulty is apparent in Mill's advocacy not just that people's autonomy be respected, but that it be a particular form, namely that of developing a fine character. Character was of fundamental importance to Mill as early as his 1833 essay on Bentham. He pointed out Bentham's failure to understand the importance of character.⁵⁵ Mill's objective, of course, is to find ways to encourage individuals *voluntarily* to want the type of things that will lead them ultimately to develop a fine character; and it is this voluntarism that allegedly makes liberalism different from conservatism. Values are to be chosen, not blindly accepted. Moreover, they are to be chosen on the basis of the free play of the individual's reason and not on account of their being considered by others to be the best, or the best available. For liberals 'the best' is whatever individuals take to be the best: since 'the best' is the subject of *any* political philosophy, that – the content of 'the best' is after all, what distinguishes liberalism from its rivals, and from conservative philosophy in particular. Now, Mill admits that not all people at all times are capable of self-improvement; hence his praise in *On Liberty* for comparatively enlightened rulers such as Akbar and Charlemagne:⁵⁶ his thought,

I argue in chapter 2, has an explicitly historicist dimension. Coercion is justified if people have not reached a stage where they are capable of being improved by rational discussion. Mill's doctrine, therefore, is applicable only to individuals within those societies who have reached the stage of intellectual and moral development where rational discussion can be engaged in. There is, after all, a right view to take of what is good, and only some people are capable of taking it. Furthermore, Mill's liberty, like the individuals who are capable of being improved by it, is also the product of particular histories. Thus Mill is in fact attempting to derive universal values, those of autonomy and rationality, from the development of a discrete and complex political tradition. Mill is unable to establish either an empirical or an *a priori* foundation for his contention that true human happiness rests in the individuality which comes from autonomy and rationality. Moreover, because he argues that the reason why no one must interfere with the self-regarding actions of individuals is that liberty is the means to these desirable ends, Mill is unable offer empirical or *a priori* foundations for the neutrality he espouses in the 'harm' principle.

Thus, individuality, rationality and autonomy are desirable because *competent* judges desire them, and not because *just anyone* desires them. Mill departs from classical liberalism to the extent that he wishes individuals *voluntarily* to want things that are good (and good because individuals of character and judgement want them), rather than maintaining only that things are good whatever they are because they are wanted.⁵⁷ While the latter clearly is his position - 'the sole evidence it is possible to produce that anything is desirable, is that people do actually desire it'⁵⁸ - it is not the whole of his position, since the evidence constituted by some people's desires counts for more than that constituted by others' desires.⁵⁹ Mill has after all something of a substantive conception of the good.

In *Considerations on Representative Government*, for example, Mill makes it plain that he

regards representative government as the best form of government:

[T]here is no difficulty in showing that the ideally best form of government is that in which the sovereignty, or supreme controlling power in the last resort, is vested in the entire aggregate of the community; every citizen not only having a voice in the exercise of that ultimate sovereignty, but being, at least occasionally, called on to take an actual part in the government, by the personal discharge of some public function, local or general.⁶⁰

Mill goes on to explain that, apart from certain local conditions which will eventually disappear, representative government is a form of government that should be regarded as proper to any society which has reached a certain level of civilisation.⁶¹ Mill, unlike a conservative such as Oakeshott, is confident that such government is to be understood 'as an approximation to some ideal manner of government', whereas for Oakeshott, or any other conservative, it is 'simply what emerged in Western Europe where the impact of the aspirations of individuality upon medieval institutions was greatest'.⁶² Nonetheless, the argument he adduces for his position is conservative in that Mill sees representative government as applicable and valuable only to specific societies at specific times of their development.

Raz's perfectionism suggests that he is the least likely to adopt what I have described as an epistemologically conservative approach. However, he turns out to do so, no less than Mill. Raz is concerned with a localist notion of perfectionism. However, he wishes to maintain Mill's and other early liberals' attachment to the idea of freedom as moral freedom guided by reason. Unlike Mill, however, Raz makes explicit the fact that his perfectionism applies only to societies where liberal democracy already exists. In *The Morality of Freedom* he states:

The value of autonomy does not depend on choice.... My argument was aimed at those who regard autonomy as valuable, but as merely one option among many. Their mistake is in disregarding the degree to which the conditions of autonomy concern a central aspect of the whole system of values of a society, which affects its general character. The conditions of autonomy do not add an independent element to the social

forms of a society. *They are a central aspect in the character of the bulk of its norms.*⁶³

The societies to which Raz is referring are western liberal democracies: where autonomy is not a central feature in the bulk of the norms of a society then it is not (necessarily) a valid perfectionist goal. However, in western democracies what is necessary for well-being is being the author of one's own life. However, Raz, like Mill, adopts a perfectionist approach which states it is not sufficient simply to be author of one's own life: one must be author of a life which is good. To achieve this people must choose between a series of worthwhile options and potentially bad options must be discouraged. Conservative forms of argument figure here in two ways. The first derives from Raz's contention that the value of autonomy is time- and culture-specific and therefore not universalist. The second is that Raz believes complete autonomy is impossible and recognises that autonomy must be limited. Again, as I shall briefly indicate here before discussing Raz in detail in Chapter 4, there are strong parallels between his position on this issue and that of someone like Oakeshott, despite Raz's perfectionist claims.

Raz argues that although opportunities to be autonomous are available in non autonomy-enhancing environments, far more options are available within autonomy-enhancing ones, including virtually all the same options that are available also in non autonomy-enhancing cultures. As an example, Raz discusses the change in the western attitude towards marriage, from the norm of pre-arranged marriages to the general convention that the married should have chosen each other. Raz notes that such a change increased personal autonomy. However, it is the means by which it did so that is relevant in this context: '... it did not do so by superimposing an external ideal of free choice on an otherwise unchanged relationship. It did so by substituting a relationship which allows much greater room for individual choice in determining the character of the relationship for one which restricted its

scope.⁶⁴ Once these changes had occurred, the personal autonomy which extended to the choice of a marriage partner began to legitimate changes in relationships *per se*. Choice has now extended not only to choice of marriage partner but to the nature of the family, and whether to marry at all. Thus the existence of an autonomy-enhancing environment not only changes the nature of relationships within social institutions but also transforms them.⁶⁵

It is the role that personal autonomy plays in establishing new social forms in societies with an autonomy-enhancing environment that is the basis for Raz's insistence on autonomy as being a necessary condition of living well in contemporary western societies:

The value of personal autonomy is a fact of life. Since we live in a society whose social forms are to a considerable extent based on individual choice, and since our options are limited by what is available in our society, *we can prosper in it only if we can be successfully autonomous.*⁶⁶

Raz's ideas on the unique value of autonomy are, then, based on the claim that in contemporary society, where social forms are founded on autonomous thought and action, to be non-autonomous is to be unable to play a valued and valuable role in society. But this is a localist argument. It declares that to be able to play a role in *this* particular society requires *these* particular qualities, qualities present in, and so valued (or not) only in, a specific society. So just as Burke declares that the rights and liberties of Englishmen are; 'an *entailed inheritance* derived to us from our forefathers, and to be transmitted to our posterity; as an estate specially belonging to the people of this kingdom without reference to any other general or prior right',⁶⁷ Raz declares that autonomy is necessary for the good life within existing western liberal democracies where, and because, it is already extant. He uses precisely the same form of argument as Burke.

While autonomy is an intrinsic good, then, according to Raz, he nonetheless supposes that it cannot be an absolute good and can work only in the context of a series of restraints.⁶⁸ The

loss of autonomy created by adverse natural conditions, for example, might be just one of the threats to autonomy necessary to be overcome by coercive intervention. For instance, in order to prevent a perpetual cycle of drought and famine creating natural conditions which reduce autonomy, it may be necessary to coerce some farmers to give up some of their land to establish reservoirs. This is perhaps the kind of example Raz has in mind when he writes:

A single act of coercion of a not too serious nature makes little difficulty to a person's ability to lead an autonomous life. Of course coercion invades autonomy not only in its consequence but in its intention. As such, it is normally an insult to the person's autonomy. He is being treated as a non-autonomous agent, an animal, a baby, or an imbecile. Often, coercion is wrong primarily because it is an affront or an insult and not so much because of its more tangible consequences which may not be very grave. In this respect, however, there is a significant difference between coercion by an ideal liberal state and coercion from most other sources. Since individuals are guaranteed adequate rights of political participation in the liberal state and since such a state is guided by a public morality expressing concern for individual autonomy, its coercive measures do not express an insult to the autonomy of individuals. It is common knowledge they are motivated not by lack of respect for individual autonomy but by concern for it. After all, coercion can be genuinely for the good of the coerced and can even be sought by them.⁶⁹

It is not insignificant that Raz himself recognises that this view has epistemologically conservative implications, however, a comparison of his position with that of Oakeshott reveals implicitly conservative political prescriptions arising from his epistemology. Raz declares:

[W]e explored the limits of the doctrine, which are two. First, it does not protect nor does it require any individual option. It merely requires the availability of an adequate range of options... this lends the principle a somewhat conservative aspect. No specific new options have claim to be admitted. The adequacy of the range is all that matters, and any change should be gradual in order to protect 'vested interests'. Secondly, the principle does not protect morally repugnant activities or forms of life. In other respects the principle is a strong one. It requires positively encouraging the flourishing of a plurality of incompatible competing pursuits and relationships.⁷⁰

Oakeshott would have no problem with such a principle. Indeed there is little substantial difference here between Raz's contention that an adequate range of options (an adequacy which must be decided in the context of liberal democratic society - we cannot autonomously

decide to be crusaders) should be available to individuals and Oakeshott's views of freedom and association as outlined in *On Human Conduct*.

Oakeshott there postulates a world of individual agents who are in a certain sense free:

[T]he starting place of doing is a state of reflective consciousness, the agent's own understanding of his situation, what it means to him ... He is 'free' because [his situation] is an understood situation and because doing is an intelligent engagement.⁷¹

An agent is one who can imagine his situation as different from what it is and recognise it as alterable by his own action. Such an individual can imagine alternative courses of action, choose between them and decide what to do. In so choosing and deciding the individual seeks to achieve a satisfaction, an end, a purpose or the promotion of an interest. Like Raz, Oakeshott recognises that such a world is contains a plurality of competing interests, and like Raz, underscoring this individualism is an idea of a community which allows individuality and autonomy to flourish. As he explains, 'the arts of agency [autonomy] are nowhere and never to be found save in the understanding of adepts'.⁷² Individuals can become adept only in societies which value autonomy or freedom: again like Raz, Oakeshott recognises the social construction of autonomy. Indeed the focus of Oakeshott's analysis in *On Human Conduct* is modes of human association, one of which is, as we have seen, based in purposive satisfaction seeking - association between individuals who share the same goals, who seek to bring about the same wished for state of affairs, who associate together to better achieve a common purpose. These associations are many, varied and often competitive. For example, a society which includes free agents will, in all probability include enterprise associations for the promotion of evangelical Christianity whilst at the same time including atheist societies dedicated to the promotion of humanist values at the expense of religions such as Christianity.

In contrast to enterprise association, Oakeshott's other mode of association is civil association. This he describes as association in terms of a 'non-instrumental moral practice'.⁷³ The crucial point about civil association is that it recognises that, for individuals to pursue incompatible and competing ends, they need a form of association which enshrines a set of rules which allows them to pursue those ends; it is that that gives civil association its non-substantive purpose. In itself, it is purposeless, because the values enshrined within it are not substantive, but only facilitatory. For instance we desire goods like freedom and security not as ends in themselves but as means to pursue certain ends. We don't desire to be free *per se*, we desire to be free to read the books of our choice, travel the to the places we wish to see and watch the football teams we support.

Oakeshott's position on civil association thus bears a striking resemblance to the point that Raz makes about autonomy:

Our analysis reinforce[s] the view that freedom is not an independent separate ideal, that freedom consists in the pursuit of valuable forms of life, and that its value derives from the value of that pursuit ... [my] analysis ... shows that autonomy is bound up with the availability of valuable options, those we identified as constituting the conditions of autonomy, those which are ... bound up with them. But the inseparability of autonomy does not mean that it is not a distinct ideal. Its distinctness is evidenced by the fact that it was described without commitment to the substance of the valuable forms of life with which it is bound up.⁷⁴

This, as Raz himself notes,⁷⁵ is a conservative statement. It recognises that the value of autonomy depends on certain conditions whilst at the same time realising that autonomy is in itself inseparable from the ideals it is used to pursue. Moreover given Raz's insistence that autonomy is only intrinsically valuable in those cultures whose environment is already autonomy-enhancing, one is drawn to the inescapable conclusion that Raz's liberalism is a positional ideology designed to defend the *status quo* in societies where an autonomous existence has been shown to be the best way of living a valuable life. Indeed, in its cultural specificity it adopts just that sceptical conservative argument for the role of politics which I

have already outlined.

Finally, Hayek offers an empirical account of why liberty is important. It rests on the idea of spontaneous orders and justifies liberty on the grounds that a free society will allow more people to live in material prosperity than would otherwise be the case. Hence, the value of freedom is for Hayek instrumental: his empirical defence of freedom achieves objectivity only by losing its moral point, namely the intrinsic value of freedom. Hayek reaches this conclusion by an impeccably conservative defence of the extant order in western liberal democracies which has allowed freedom to flourish because of the evolution of universalizable, non-purposive laws, and also by the establishment – through the unintended consequences of human actions – of a market order, ‘[S]ince such an order [the market] has not been created by an outside agency, the order as such also can have no purpose, although its existence may be very serviceable to the individuals who move within such order’.⁷⁶ The order is ‘serviceable’ because embodied within it is inarticulable knowledge which can be destroyed by inappropriate intervention. Therefore, in order to maintain the market order and law - on which prosperity and liberty rest - state action or planning must occur only in accordance with the traditions which established both the system of law and the market order:

The important insight to which an understanding of the process of evolution of law leads is that the rules which will emerge from it will of necessity possess certain attributes which laws invented or designed by a ruler may but need not possess, and are likely to possess only if they are modelled after previously existing practices.⁷⁷

Hayek’s argument is clearly conservative in that he offers both a pragmatic account of liberty based on empirical circumstances and justifies that appeal with reference to traditions in existing political societies. What Hayek is doing is advocating a pragmatic, that is to say an epistemologically conservative, justification for liberty and arguing that reference to tradition offers a sounder defence of the liberal values than reason. Hayek’s commitment to

liberty is, therefore, founded on a pragmatic defence of values which have led to the establishment of liberal market orders, moreover, the laws and practices which secure liberty can only be amended by reference to the traditions which gave them birth: a politically as well as an epistemologically conservative position.

What these thinkers all have in common is that their attempt to provide an objective justification for liberty fails, and that that failure leads them to adopt conservative forms of argument in the way they try to overcome the lack of metaphysical foundations; the problem which O'Neill argues is at the core of the intellectual crisis in western moral philosophy. For example, Hayek tries to achieve objectivity on the basis of scientific claims about liberty providing material prosperity. This is a fairly uncontroversial good but it means that Hayek's defence of liberty, despite claims to the contrary, becomes instrumental, and thus pragmatic in relation to the nature of particular societies. Rawls's conservatism emerges in his later work *Political Liberalism*, a response to the acknowledged universalist shortcomings of a *Theory of Justice*; thus, despite Rawls' apparently universalist claims and his definition of freedom as reason he too finally accepts the historical nature of the subject and abandons his attempt to give an objective universalist account of liberal justice. I shall go on to argue that this process begins with the difficulties that John Stuart Mill, the exemplar of modern liberalism, has in finding a coherent justification of his idea of freedom as moral freedom, rather than simply the pursuit of appetites. I shall show how this process culminates in the purely materialist defence of liberal moral and political values offered by Hayek and explain why Raz's perfectionist attempt to justify the morality of freedom resorts in the end to a localist and at the very least implicitly conservative defence of western liberal values. In short I shall demonstrate how the localist conservative epistemology used by liberal writers invariably implies conservative political prescriptions.

- ¹ Gerald F. Gaus, *Value and Justification: The Foundations of Liberal Theory* (Cambridge University Press, Cambridge, 1990)
- ² Gerald F. Gaus, *Justificatory Liberalism* (Oxford University Press, Oxford, 1996)vii.
- ³ *ibid.*
- ⁴ See, for example, N. Bosanquet, *After the New Right*, (Heinemann, London 1983), S. Hall and M. Jacques (eds) *The Politics of Thatcherism* (Lawrence & Wishart, London, London 1983), Ruth Levitas (ed) *The Ideology of the New Right* (Polity, Oxford, 1986), Norman Barry, *The New Right* (Croom Helm, London, 1987) and Desmond King, *The New Right* (Macmillan, London, 1987).
- ⁵ *ibid.*
- ⁶ David Green, *The New Right* (Wheatsheaf, Brighton, 1987)
- ⁷ Edmund Burke, *Reflections on the Revolution in France* (Penguin, Harmondsworth, 1969) p183.
- ⁸ Samuel Huntington, "Conservatism as Ideology," *American Political Science Review*, vol. 51, 1957, pp 454-73.
- ⁹ Michael Oakeshott, *Rationalism in Politics and Other Essays* (Methuen, London, 1962) p169.
- ¹⁰ *ibid.* p31
- ¹¹ For example, consider Rorty's discussion of the self in *Objectivity, Relativism and Truth* (Cambridge University Press, Cambridge, 1991). He declares that the self is 'a network of beliefs, desires, and emotions with nothing behind the attributes. For purposes of moral and political deliberation and conversation, a person is just that network'.
- ¹² *ibid.*
- ¹³ Rorty's later book, *Achieving Our Country: Leftist Thought in Twentieth-Century America* (Harvard University Press, Cambridge, Massachusetts, 1998) is an attempt to encourage the development of a democratic consensus around the ideas of a socially just and classless society, but on his grounds such encouragement can be no more than that; just encouragement.
- ¹⁴ Rorty in fact has an essay of that title, Rorty, "Postmodernist Bourgeois Liberalism", in R.Hollinger (ed) *Hermeneutics and Praxis* (University of Notre Dame Press, Notre Dame, 1985).
- ¹⁵ Rorty, *Contingency, Irony and Solidarity*, (Cambridge University Press, Cambridge, 1989) p47.
- ¹⁶ *ibid.* pxxv.
- ¹⁷ Rorty, *Contingency, Irony and Solidarity*, pp58-9.
- ¹⁸ Michael Oakeshott, *Rationalism in Politics*, p120.
- ¹⁹ Burke, *Reflections on the Revolution in France*, p152.
- ²⁰ See Rorty, *Philosophy and the Mirror of Nature* (Princeton University Press, Princeton, 1980), pp389-94.
- ²¹ *ibid.* pp389-90.
- ²² Rorty, *Contingency, Irony and Solidarity*, pp57-6.
- ²³ *ibid.* p57.
- ²⁴ *ibid.* p59.
- ²⁵ Oakeshott, *On Human Conduct* (Oxford University Press, Oxford 1975) p78-9
- ²⁶ ²⁶ *ibid.* For Rorty, Oakeshott's *societas* is appropriate to a liberal society 'conceived as a band of eccentrics collaborating for purposes of mutual protection rather than as a band of fellow spirits united by a common goal'. - p59.
- ²⁷ Edmund Burke, *Reflections on the Revolution in France*, p135.
- ²⁸ *ibid.* p315.
- ²⁹ Rorty, *Contingency, Irony and Solidarity*, p61.
- ³⁰ Edmund Burke, *Reflections on the Revolution in France*, p184.
- ³¹ Onora O'Neill, *Towards Justice and Virtue* (Cambridge University Press, Cambridge, 1996).
- ³² *ibid.* p31-2.
- ³³ *ibid.* p36-7.
- ³⁴ *ibid.* p32.
- ³⁵ *ibid.* p32 fn35.
- ³⁶ Immanuel Kant, *Groundwork*, p114; cited H. Williams, *Kant's Political Philosophy* (Blackwell, Oxford, 1983)p34
- ³⁷ Gerald F. Gaus, *Value and Justification: The Foundations of Liberal Theory, and Justificatory Liberalism*.
- ³⁸ Onora O'Neill, *Towards Justice and Virtue*, p2.
- ³⁹ *ibid.* p31-2.
- ⁴⁰ B. Brecher, *Getting What You Want?: A Critique of Liberal Morality* (Routledge, London, 1998)p66.
- ⁴¹ Gerald Gaus, *The Modern Liberal Theory of Man* (Croom Helm, Beckenham, 1983) p7. cf. B. Brecher, *Getting What You Want?: A Critique of Liberal Morality*, Chapter3.
- ⁴² See for example Joseph Raz, *The Morality of Freedom*, (Clarendon Press, Oxford, 1986) Chapter 5.
- ⁴³ R. Dworkin, 'Liberalism' in S. Hampshire (ed) *Public and Private Morality* (Cambridge University Press, Cambridge, 1978), p127.
- ⁴⁴ John, O'Neill, *The Market: Ethics, Knowledge and Politics* (Routledge, London, 1998) p16.
- ⁴⁵ John Stuart Mill, *Considerations on Representative Government* (Oxford University Press, Oxford, 1975) pp 28-9, emphasis added.
- ⁴⁶ Joseph Raz, *The Morality of Freedom*.
- ⁴⁷ Michael Walzer, 'Philosophy and Democracy' *Political Theory*, 9 1981, pp379-99, and *Spheres of Justice* (Blackwell, Oxford, 1983); Michael Sandel, 'The Procedural Republic and the Unencumbered Self,' *Political Theory* 12 (February 1984), pp81-96.
- ⁴⁸ John Rawls, *Political Liberalism* (Columbia University Press, New York, 1993).
- ⁴⁹ *ibid.* pp xviii-xix.

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- ⁵⁰ Richard Bellamy, *Liberalism and Modern Society* (Polity Press, Cambridge, 1992).
- ⁵¹ John Rawls, *Political Liberalism*, pp408-9.
- ⁵² Roger Scruton, *England: An Elegy* (Pimlico, London, 2000) p181.
- ⁵³ John Rawls, *A Theory of Justice* (Oxford University Press, Oxford, 1973), pp30-1.
- ⁵⁴ John Stuart Mill, *Utilitarianism*, in Acton (ed) *Utilitarianism, On Liberty and Considerations on Representative Government* (Everyman, London, 1972)p7.
- ⁵⁵ John Stuart Mill, *Remarks on Bentham's Philosophy*, cited Crisp, *Mill on Utilitarianism* (Routledge, London, 1997)p11.
- ⁵⁶ John Stuart Mill, *On Liberty*, (Penguin, Harmondsworth, 1974)p69.
- ⁵⁷ The classical liberal formulation of this derives from Hobbes. 'But whatsoever is the object of a man's appetite or desire, that it is which he for his part calleth *good*: and the object of his hate and aversion, *evil*; and of his contempt *vile* and *inconsiderable*. For these words of good, evil, and contemptible, are ever used with relation to the person that useth them: there being nothing simply and absolutely so;' - Thomas Hobbes, *Leviathan* (Blackwell, Oxford, 1957), p32.
- ⁵⁸ John Stuart Mill, *Utilitarianism*, in *Utilitarianism, On Liberty and Considerations on Representative Government*, (Everyman, London, 1984), p36.
- ⁵⁹ Mill is here referring to those who have undergone a wider range of experience than others. He believes that their views are therefore more worthy than those whose experience is more limited. See *ibid.* p10-11.
- ⁶⁰ John Stuart Mill, *Considerations on Representative Government*, in *Utilitarianism, On Liberty and Considerations on Representative Government*, p223.
- ⁶¹ *ibid.* p234.
- ⁶² Michael Oakeshott, 'The Masses in Representative Democracy', in A Hunold (ed) *Freedom and Serfdom: An Anthology of Western Thought*, (Reidel, Dordrecht, Holland, 1961) p156.
- ⁶³ Joseph Raz, *The Morality of Freedom* (Clarendon Press, Oxford, 1986)p394, emphasis added.
- ⁶⁴ *ibid.*
- ⁶⁵ *ibid.* p392-3.
- ⁶⁶ *ibid.* p394 emphasis added.
- ⁶⁷ Burke, *Reflections on the Revolution in France*, p119.
- ⁶⁸ Raz, *The Morality of Freedom*, p155-6.
- ⁶⁹ *ibid.* p156-7.
- ⁷⁰ *ibid.* p425.
- ⁷¹ Oakeshott, *On Human Conduct*, p37.
- ⁷² *ibid.* p87
- ⁷³ *ibid.* p147.
- ⁷⁴ Raz, *Morality of Freedom*, p395.
- ⁷⁵ See note 70 above.
- ⁷⁶ Hayek, *Law Legislation and Liberty Vol I* (Routledge & Kegan Paul, London, 1982)p39.
- ⁷⁷ *ibid.* p85.

Chapter 2

Mill, Neutrality and Inconsistency

In chapter 1 I examined the failure of liberalism to establish a publicly justified morality founded on the values of rationality, autonomy or tolerance. As in so many other areas of liberal theory the thought of John Stuart Mill exemplifies the tensions that liberalism faces in dealing with the failure to establish such a justification. On the one hand, Mill seeks to promote the development of individuals into beings of good character; whilst on the other he believes that the only reason for coercing an individual is to prevent harm to others. Mill attempts to square this circle, I shall argue by utilising an historicist conservative epistemology; and this leads him to political prescriptions which are inevitably of a conservative character despite his own explicit liberalism.

Mill's objective, formulated in the 'harm principle' in his celebrated work *On Liberty*, is to assert that the only justification, collectively or individually, for interfering with the freedom of action of another individual is self-protection. Such a position appears unequivocally neutral; however, it is neutral only in the instrumental sense that individuals must be left free if they are to achieve individuality; Mill is not neutral about the good it is just he sees this limited neutrality as a means to achieve the good. Nowhere is this more clearly demonstrated than in Mill's own ambivalent attitude towards the conception of the good that is, at the very least, implicit within his thought. The roots of Mill's ambivalence lie in the dichotomy between his conception of liberty - clearly formulated in the 'harm principle' - and his utilitarianism, which Mill insists is logically prior to his liberalism.¹ Utilitarianism, however, is a teleological doctrine which declares that the criteria for judging the moral

worth of an action is whether or not it promotes pleasure or inflicts pain. Is it possible then, for Mill to remain neutral between competing conceptions of the good? The heart of the difficulty lies in the very nature of Mill's commitment to neutrality. It is not clear whether Mill is committed to neutrality as an end in itself, or whether it is for him simply a means to his (implicit) conception of the good - in which case his system can hardly be neutral. Mill's position is further complicated by the nature of the utilitarianism he adopts, of which there are at least two interpretations. John Gray,² for example, sees Mill, implicitly at least, as a rule utilitarian. Mill is not always seen in this way, being more often, in fact, interpreted as an orthodox act utilitarian,³ one who believes it is never morally right to perform an action when some alternative would produce more happiness. Rule utilitarianism, however, supposes that it may be morally right to perform an action which is in accord with a moral rule, on the grounds that the general practice of the rule does more good than the omission of such a practice or the practice of an alternative rule, even if the specific action concerned does not *itself* lead to a balance of pleasure over pain or happiness over unhappiness. Rule utilitarianism evaluates the moral rightness of an action, not by its actual consequences, but by the hypothetical consequences were the rule which the action follows generally practised.⁴ The crucial hypothetical consequence to be sought, and which Mill believes the establishment of liberty will promote, is the development of autonomous rational individuals. For Mill, only such individuals are capable of being truly happy. Thus Mill's conception of the good - the development of autonomous individuals - is a product of his rule utilitarianism.

If Mill is an indirect utilitarian in this way, as Gray alleges, then his neutrality between the competing conceptions of the good of individuals is adopted as a means of pursuing a higher good, that of the true happiness of individuals. The problem for Mill, and indeed for other perfectionist liberals, is that in order to justify their procedural neutrality they must have a

conception of the good. However, this raises two further difficulties. First they must find a normative basis for such a conception; and the only one available is founded on assumptions immanent in the political traditions of the geographical areas where liberalism emerged. Second, as perfectionist liberals have a substantive conception of the good, they must find means to promote it without coercion. But liberals have failed to find a convincing answer to this particular problem.⁵ In order fully to explain these difficulties it is important first to understand in greater detail competing liberal models of neutrality.

I - Neutrality of Justification and Neutrality of Effect

The doctrine of liberal neutrality takes several forms. One model is that offered by Nozick in *Anarchy, State and Utopia*, where he states:

... there is no *social entity* with a good that undergoes some sacrifice for its own good. There are only individual people, different individual people, with their own individual lives. Using one of these people for the benefit of others, uses him and benefits the others. Nothing more. What happens is that something is done to him for the sake of others. Talk of an overall social good covers this up. (Intentionally?) To use a person in this way does not sufficiently respect and take account of the fact that he is a separate person, that his is the only life he has. *He* does not get some overbalancing good from his sacrifice, and no one is entitled to force this upon him - least of all a state or government that claims his allegiance (as other individuals do not) and that therefore scrupulously must be *neutral* between its citizens.⁶

This is a paradigmatic liberal view of neutrality of justification. It states that individual freedom or autonomy demands that political and social actions or procedures should not be justified or undertaken on the basis that they either promote the conception of the good of some individuals ahead of that of others, or one conception of the good ahead of another. By contrast, neutrality of effect demands that political and social actions or procedures should not have the effect of promoting either one individual's conception of the good ahead of another individual's, or one conception of the good over another. This leads to the question; of whether liberal ideas demand neutrality between two individuals who adopt competing

conceptions of the good, or neutrality between the competing conceptions of the good themselves. In the passage above, Nozick clearly intends the former: political and social actions or procedures should be neutral concerning each person's chances of implementing the ideal of the good he or she happens to have. However, related to this is a far stricter ideal of neutrality which states that political and social actions or procedures should be neutral regarding the likelihood that a person will adopt one conception of the good, rather than another.

The latter principle is far more radical than the former. However, as I shall show, it is the former principle that most liberals adopt, and even in this less radical case, incompletely. This principle simply demands that once individuals have a developed conception of the good liberals will restrain themselves from intervention to promote one individual's conception of the good ahead of another's. I shall discuss the limits of such a principle shortly in relation to neutrality of justification and neutrality of effect. However, before doing so, I shall explain why I believe that most liberals are neutral between the developed conceptions of the good of individuals rather than the conceptions of the good in themselves.

There are clearly certain ideals that liberals would reject out of hand on the basis that they can be achieved only by harming others; the white power ideals of the Ku Klux Klan spring to mind, as does the desire of certain right-wing groups in Western Europe to expel all immigrants. However, there are other ideals that, although they might not explicitly threaten harm to individuals or groups, liberals find damaging to their ultimate goal, the achievement by individuals of autonomy. There are certain conceptions of the good which if adopted, however freely, militate against the attainment of autonomy. For example, in liberal states some individuals could choose to follow a religion which insists that its holy book is the word of God as revealed to a prophet by the archangel Gabriel. They accept these

teachings without question, including revealed laws which place severe, if voluntary - at least in liberal democratic states - restrictions, on the rights of women. If liberalism were to be entirely neutral between the ideals of liberalism and this fictional religion then it would accept demands from that religion that the women's votes in elections should be transferred to their husbands and also accept demands from certain extremist groups that their women should not be educated at all.

Now liberals would find it very hard to be neutral between ideals such as these and the ideals of liberal autonomy. Even a theorist like William Galston, who argues for value pluralism within a liberal paradigm, makes it clear that all individuals should have a right of exit from any group of which they are members.⁷ Even by accepting the importance of the right of an individual to choose whether to remain or leave such a religious confession - in effect to allow an individual to defy the revealed word of God - Galston is being unequivocally non-neutral between liberal and non-liberal conceptions of the good. This requirement of choice means - *de facto* if not *de jure* - that liberals tend to be neutral between the conceptions of the good of individuals rather than conceptions of the good *per se*. This is a contentious point: however, as I shall show later in the chapter it is John Stuart Mill's position. It is also that of other purportedly neutralist liberals such as Friedrich Hayek.

The limitations of liberal neutrality become even more apparent when the dichotomy between justificatory neutrality and neutrality of effect is examined. The concept of neutrality is a complex one; and to clarify matters I shall express the argument more schematically:

1. Neutrality of justification demands that political and social actions or procedures cannot

be justified because they either

- a) promote the conception of the good of some individuals ahead of that of others;
- or
- b) promote one conception of the good ahead of another.

1. Neutrality of effect demands that political and social actions or procedures should not have the effect of either

- a) promoting either one individual's conception of the good ahead of that of other individuals; or
- b) promoting one conception of the good over another.

From this schema it can be seen that principle 2b is the most radical formulation of a principle of neutrality. Any act a state or society undertakes must both have a neutral effect on society as a whole, and not discriminate in any way between competing conceptions of the good even if they run directly counter to the liberal paradigm as in the example cited above. I shall argue that principle 2b is not adopted by even the firmest advocates of neutralist liberalism: all liberals, whatever their perfectionist protestations, have to adopt a less radical principle or they cease to be liberals.

Neutrality of justification is the weakest version of liberal neutrality. It argues not that the effect of any political actions should be neutral, but only that any actions taken must not be justified in terms of conceptions of the good. Consider an example. All governments, even the minimal state of legend, must decide on priorities for taxation. A group within the government might argue that a life spent enjoying art is intrinsically better than one spent playing computer games. They might therefore argue that activities relating to computer

games should be more highly taxed than activities relating to art, and they would justify such a decision with moral and aesthetic arguments demonstrating the superiority of a life spent in artistic pursuits. This plainly contravenes any idea of neutrality of justification.

If neutrality applies to an issue which involves questions over whether a lifestyle dominated by art is superior to a lifestyle dominated by computer games, then it must also apply to more significant matters, including the type of society in which individuals wish to live. To explain neutrality of effect it is again useful to use an example. A government decides on a policy to ensure that individuals are safe whilst riding motorcycles; they insist on the wearing of crash helmets. They introduce the policy on the basis that it will cut death rates amongst the more economically productive sections of society. However, within the state is a substantial minority whose religion demands the wearing of a particular form of head covering which makes wearing a helmet impossible. If this head covering is not worn it will damage the individuals' standing in their own community. The group makes an appeal to the government for a dispensation not to be compelled to wear crash helmets. The government, however, insists that crash helmets must be worn and points out that no one is compelled to ride a motorcycle. Such a prohibition does not have a neutral effect in that it prevents certain individuals doing what they would otherwise choose to do, that is ride motorcycles. Whether it is justificatorily neutral or not depends on whether or not the prohibition is independently justifiable. The religious group would argue that it is not because they would place their honour within the community above the imperatives of personal safety or economic efficiency. The law then could not be justified in terms of neutrality of effect.

But what about state actions which are independently justifiable? Take for example a small liberal democratic state which is under threat from a larger, aggressive and repressive

neighbour. The government of the state wishes to secure its citizens from attack by its neighbour. It does not wish to compel its citizens to undertake military service and training but instead offers a series of inducements to its citizens to participate in military activity. These inducements include continuing education while undertaking military service, free higher education and professional training at the end of their service, and additional holidays for those who serve with the reserve or territorial forces. These policies are designed to fulfil the classical liberal demand of a state that it protect its citizens from harm; and that its citizens not be compelled to serve if for reasons of conscience or otherwise they decide they cannot undertake military service. However, although such policies may be well intentioned, superficially at least, they do not have a neutral effect. However, inasmuch as they are designed to protect the liberal polity they do offer an independent reason for their adoption. Thus according to some liberals this means such policies do not contravene neutrality of justification.

Indeed, Nozick makes a similar response to criticism that his state is non-neutral because of its political organization and its property and contract laws:

Not every enforcement of a prohibition which differentially benefits people makes the state nonneutral. Suppose some men are potential rapists of women, while no women are potential rapists of men or of each other. Would a prohibition against rape be non-neutral? It would by hypothesis, differentially benefit people; but for potential rapists to complain that the prohibition was nonneutral between the sexes, and therefore sexist would be absurd. There is an *independent* reason for prohibiting rape: ... people have a right to control their own bodies, to choose their sexual partners, and be secure against physical force and threat. That a prohibition thus independently justifiable works out to affect different persons differently is no reason to condemn it as nonneutral, provided it was instituted or continues for (something like) the reasons which justify it, and not in order to yield differential benefits... To claim that a prohibition or rule is nonneutral presupposes it is unfair.⁸

Neutrality, whether of justification or effect, can therefore be limited by independent reasons. This case rests on the assumption that so long as the reason for an action is not that it will favour one party and hinder another, but that - for a valid independent reason - such

an action does not contravene the liberal demand for neutrality. But such a justification is in itself problematic. It begs the question what constitutes valid independent reasons. The government seeking to preserve the lives of economically productive citizens might see that as an independent reason, as it is not seeking to deliberately discriminate against the minority whose head covering is incompatible with a crash helmet. However, the minority might claim they are being discriminated against because their faith places personal honour and spirituality ahead of economic production.

What is clear from this discussion of the nature and the site of neutrality is that neutrality or neutral political concern cannot be an absolute principle; rather it is a response to the intuitive distrust that many individuals feel for having particular ideas of the good promoted by government or elites. Raz makes a similar point in his critique of anti-perfectionism:

At the intuitive level anti-perfectionism responds to a widespread distrust of concentrated power and of bureaucracies. Any political pursuit of ideals of the good is likely to be botched and distorted. The best intentions and the wisest council are likely to misfire if entrusted to the machinery of state action. Beyond that there is a deep-felt conviction that it is not within the rights of any person to use the machinery of state in order to enforce his conception of the good life on other adult persons.⁹

Theories of neutrality and neutral political concern are therefore theories of restraint. They deny the government's right to pursue valuable goals and require it to maintain undisturbed the *status quo*, even though it might be able to improve it if it were to try. Raz again makes the point very clearly:

The doctrine of political neutrality is a doctrine of restraint for it advocates neutrality between valid and invalid ideals of the good. It does not demand that the government shall avoid promoting unacceptable ideals. Rather, it commands the government to make sure that its actions do not help acceptable ideas more than unacceptable ones, to see to it that its actions will not hinder the cause of false ideals more than they do that of true ones.¹⁰

Raz's argument here raises a difficult point for liberals concerning their own conception of the good. On the one hand, although liberals believe that they know what the good is, if they

compel any individual to pursue the liberal idea of the good - the pursuit of autonomy - they are removing his or her capacity for choice and hence any chance of becoming truly autonomous. So coercion for liberals invariably leads to the destruction of liberal ideas of the good. This is why all liberals, however forcefully they advocate a substantive conception of the good, also demonstrate a degree of neutrality or restraint.

In what follows I shall show how these contradictions work themselves out in the thought of John Stuart Mill. Mill is typical of the type of liberal who offers a neutralist formulation: he argues in the 'harm principle' that individuals should be allowed to pursue their own conception of the good, but nonetheless, as he shows in *Utilitarianism*, he clearly has his own conception of the good which he believes is more worthy of pursuit than any other. Mill's advocacy of freedom for the individual and neutrality by the state is instrumental; it is a means to an end, rather than an end in itself. Mill needs the restraint of the state demanded by neutrality because without such restraint individuals will be restricted from developing in the way he desires. To explain how this neutralist-perfectionist dichotomy is worked out in Mill, I shall first examine his neutralism outlined in his 'harm principle', and then explore his perfectionism and its conflict with his neutralism in *Utilitarianism*.

II - 'Harm' and neutrality

Before exploring the neutralist dimension of Mill's thought as it is delineated in the 'harm principle', however, I want briefly to discuss the appropriateness of analysing Mill's thought in terms of the contemporary debate in liberalism between neutralism and perfectionism. Mill certainly did not believe that he was being neutral and clearly had a conception of the good - the development of individuals of fine character. In order to achieve this conception of the good he was prepared to take any action short of outright coercion. Nonetheless, I

shall argue that, in effect, the 'harm principle' is precisely a neutralist doctrine in the sense of neutrality demanding restraints on government action. Equally, Mill's objective of establishing a society comprised of individuals of fine character is clearly a perfectionist goal. Hence, what became the contemporary liberal debate between neutralists and perfectionists is first raised through the contradictions present in the thought of liberalism's exemplar John Stuart Mill, whose attempts to reconcile these contradictions are the foundation of much of the current debate.

Mill is at his most neutralist in the 'harm principle'. His objective in *On Liberty* is

... to assert one very simple principle, as entitled to govern absolutely the dealings of society with the individual in the way of compulsion and control whether the means used be physical force in the form of legal penalties or the moral coercion of public opinion. That principle is that the sole end for which mankind are warranted individually or collectively in interfering with the liberty of action of any of their number is self-protection. That the only purpose for which power can be rightfully exercised over any member of a civilised community, against his will, is to prevent harm to others. His own good either political or moral, is not a sufficient warrant. He cannot rightfully be compelled to do or forbear because it will make him happier, because, in the opinions of others, to do so would be wise or even right. These are good reasons for remonstrating with him, or reasoning with him, or persuading him, or entreating him, but not for compelling him or visiting him with any evil in case he do otherwise. To justify that, the conduct from which it is desired to deter him must be calculated to produce evil to someone else. The only part of the conduct of anyone for which he is amenable to society is that which concerns others. In the part, which merely concerns himself, his independence is, of right, absolute. Over himself, over his own body and mind, the individual is sovereign.¹¹

The 'harm principle' seems unequivocally neutral because it specifies that no one may interfere with an individual pursuing their own conception of the good even if they believe them to be mistaken or foolish: where actions affect only the individual in question, no one, whatever their opinions to the contrary, has the right to compel an individual to act against their will. From the statement of this principle Mill develops his distinction between self-regarding actions - that is, actions that affect only the individual concerned - and other-regarding acts. Where an act affects only the self, no matter how foolhardy, no matter how

dangerous or immoral others may deem it to be, there should be no force used against the individual to prevent it.

However, depending on how it is defined, a prohibition against doing 'harm' need not necessarily be neutral between competing conceptions of the good. There are certain types of 'harm' which, if prevented, would have non-neutral effects. However, it is just these definitions of 'harm' which Mill explicitly rejects. There are possible separate senses in which individuals can be harmed: first, someone can be physically harmed; second, they can be emotionally harmed; and third, their essential interests as human beings can be harmed. Of these three, only physical harm is straightforward; but Mill cannot restrict his notion to physical harm because that would mean rejecting the 'harm' caused by failure to keep contracts or loss of property resulting from fraud. What then does Mill mean by 'harm'? He recognises that some self-regarding acts can cause moral outrage to others without unequivocally harming them. As examples, Mill cites the moral outrage caused to some members of religious confessions by certain acts, and he accepts as a harm the distress caused by observing others engage in acts believed to be morally wrong, perverse, or unacceptable. Note his comments on the effect eating pork has upon Moslems:

[T]here are few acts which Christians and Europeans regard with more unaffected disgust than Mussulmans regard this particular mode of satisfying hunger. It is, in the first place, an offence against their religion; but this circumstance by no means explains either the degree or the kind of their repugnance; for wine also is forbidden by their religion, and to partake of it is by all Mussulmans accounted wrong, but not disgusting.¹²

Despite the distress it causes, however, Mill rejects any blanket prohibition of eating pork even in a society in which the majority is Moslem:

[W]ould it be a legitimate exercise of the moral authority of public opinion, and if not, why not? The practice is really revolting to such a public. They also think that it is forbidden and abhorred by the deity. Neither could the prohibition be censured as religious persecution, since nobody's religion makes it a duty to eat pork.¹³

He says of the demands of religious groups such as sabbatarians and Moslems for such interference:

[S]o monstrous a principle[regarding the perpetration of acts that create moral outrage as a type of harm done to those outraged] is far more dangerous than any single interference with liberty; there is no violation of liberty which it would not justify; it acknowledges no right to any freedom whatever, except perhaps to that of holding opinions in secret, without ever disclosing them;¹⁴

As Mill argues (see below) neither the intensity of the distress, nor the number of people who share it affect the conclusion that it is illegitimate for the majority to impose its values on the rest of society. Such a position, however, runs counter to a strict interpretation of utilitarianism. After all if someone enjoys eating pork, it gives them momentary satisfaction from hunger, but it is unlikely to be a necessary condition of their long-term happiness or well-being in any direct sense of cause and effect; whereas the eating of pork has a directly harmful effect on Moslems as it causes the pain of moral outrage. But the inadvertent creation of such outrage is justified, because to allow public opinion, however strongly and deeply felt, to dictate the conduct of individuals would be to undermine the objective of limiting interference with the self-regarding acts of individuals.

[H]ow will the remaining portion of the community like to have the amusements that shall be permitted to them regulated by the religious and moral sentiments of the stricter Calvinists and Methodists? Would they not, with considerable peremptoriness, desire these intrusively pious members of society to mind their own business? This is precisely what should be said to every government and every public who have the pretension that no person shall enjoy any pleasure which they think wrong.¹⁵

He deplores the state of affairs in which 'Wherever the sentiment of the majority is still genuine and intense it is found to have abated little of its claim to be obeyed.'¹⁶ Moral outrage is specifically rejected as a species of harm for two reasons: first because in undertaking acts which cause moral outrage, such as drinking on Sundays or eating pork, individuals do not intentionally calculate evil against sabbatarians and Moslems; and second, because to accept moral outrage as a species of actionable harm would be to accept

the right of intense, genuine public opinion to interfere with even the 'self-regarding acts' of individuals. Mill clearly rejects moral outrage as a species of 'harm'.

The third and most complex element of Mill's 'harm' is that done to the essential interests we have as human beings. That this is likely to be what Mill fundamentally means by 'harm' is apparent when we see why Mill deplores interference in the 'self-regarding' acts of individuals. Mill believes that individuality is a necessary ingredient of human happiness. For him, happiness is a condition of successful activity in which individuals express their distinctive natures.¹⁷ It is as one of the dimensions of autonomy, and thereby one of the conditions of individuality, that freedom, as the absence of coercion, is vital as a condition of happiness. The promotion and protection of such freedom, however, requires neutrality of justification. For if state and society are not neutral between competing conceptions of the good, then they must impinge upon the autonomy of persons which is a pre-condition of their individuality (and hence their happiness). Therefore, state and society must be neutral between the purposes of competing individuals and voluntary groups provided they do not harm each other. For if a state or society attempts to impose its own collective purpose or conception of the good on individuals, then it must infringe the autonomy of those individuals - because autonomy, if it is to be meaningful, must include the pursuit of goals set according to the individual's own conception of the good. It is furthermore, a pre-condition of the development of individuality that individuals have different and sometimes competing conceptions of the good. If everyone pursued the same purposes and had the same conception of the good imposed upon them, they would not then be individuals (individuals, that is to say, as understood by the liberal tradition¹⁸). Hence, to harm someone turns out for Mill somehow to impugn the essential interests individuals have in autonomy, because without autonomy they cannot be individuals. It is this essential interest in autonomy that is harmed if there is interference in individuals' self-regarding actions.

At its simplest, harm to these essential interests would include the moral harm done to individuals by, for instance, lying or failing to keep promises. However, as Mill believes that human beings have an essential interest in individuality, he also insists that they have essential interests in freedom of speech, association and religion, freedom from arbitrary arrest and imprisonment, and the security of person and property. Physical harm need not be a feature of any particular interference with these freedoms. But restrictions on them would be harmful to the essential interest that we have in autonomy. Equally, harm to those interests might also include harm to the institutions and social conditions that promote autonomy and individuality. And given Mill's statement that every person should bear 'his share of the labours and sacrifices incurred for defending the society or its members from injury and molestation',¹⁹ he clearly regards the failure to perform public obligations as a species of harm.

Does this mean that, according to Mill, society after all has rights against the individual? What he argues is that although the self-regarding acts of individuals are not to be interfered with by society, society is certainly entitled to disapprove of their actions:

[A] person who shows rashness, obstinacy, self-conceit - who cannot live within moderate means; who cannot restrain himself from hurtful indulgence; who pursues animal pleasures at the expense of those of feeling and intellect - must expect to be lowered in the opinion of others, and to have a less share of their favourable sentiments.²⁰

Furthermore, in dealing with self-regarding conduct that is regarded as socially unacceptable, coercion and selfish indifference are not only the only options open to society:

[I]t would be a great misunderstanding of this doctrine to suppose that it is one of selfish indifference which pretends that human beings have no business with each others conduct in life, and that they should not concern themselves about the well-doing or well-being of one another, unless their own interest is involved. Instead of any diminution, there is need of a great interest in physical exertion to promote the good of others. But disinterested benevolence can find other instruments to persuade people to their good than whips and scourges.... I am the last person to undervalue the self-regarding virtues; they are only second in importance, if even second, to the social. It is

equally the business of education to cultivate both. But even education works by conviction and persuasion as well as by compulsion, and it is by the former only that, when the period of education is passed, the self-regarding virtues should be inculcated. Human beings owe to each other help to distinguish the better from the worse, and encouragement to choose the former and avoid the latter. They should be forever stimulating each other to increased exercise of their higher faculties and increased direction of their feelings towards wise instead of foolish, elevating instead of degrading, objects and contemplations.²¹

Beyond persuasion and exhortation, however, Mill is not prepared to go. To demonstrate his hostility to the idea of social rights, Mill invokes the 'social rights' claimed by members of the temperance organisations that demand interference with what are clearly the self-regarding acts of individuals. Social rights are understood as follows:

[I]f anything invades my social rights, certainly the traffic in strong drink does. It destroys my primary right of security by constantly creating and stimulating social disorder. It invades my right of equality by deriving a profit from the creation of misery I am taxed to support. It impedes my right to free moral and intellectual development by surrounding my path with dangers and by weakening and demoralizing society, from which I have a right to claim mutual aid and intercourse.²²

For Mill, such a theory of social rights means 'that it is the absolute social right of every individual that every other individual shall act in every respect exactly as he ought; that whosoever fails thereof in the smallest particle violated my social right and entitles me to demand from the legislature the removal of the grievance'.²³ Yet it appears that nothing would be more certain to undermine the conditions for the development of individuality, and hence the essential interests that an individual has in autonomy, than the excessive use of strong drink. As a section of the community, drinkers - at least while drunk - can hardly be pursuing their rationally chosen goals. Equally, if people are spending a significant portion of their income on alcohol, they are not living moderately and are hardly building up the store of capital that would help make them autonomous and financially secure. Thus on such an interpretation, the ability to buy strong drink can be seen to be harmful to the essential interests individuals have in autonomy and security. Mill, however, regards the doctrine of social rights as pernicious, saying of the temperance campaign's arguments that '[T]he

doctrine ascribes to all mankind a vested interest in each other's moral, intellectual, and even physical perfection, to be defined by each claimant according to his own standard.¹²⁴

Mill is arguing here against what is a very strong conception of social rights. However, he also believes that public and private condemnation of socially damaging self-regarding acts is not only justified, but also a moral duty. Now, although it is possible, or even probable, that the sale of strong drink causes harm to the wider society, Mill is not prepared to accept its prohibition. On what basis does Mill argue for this limitation of social rights? As a utilitarian, Mill cannot resort to using terms like 'natural rights', but nevertheless he does claim that individuals can have positive rights established by law and convention:

[W]hen we call anything a person's right, we mean that he has a valid claim on society to protect him in the possession of it, either by the force of law, or by that of education and opinion. If he has what we consider to be sufficient claim, on whatever account, to have something guaranteed to him by society, we say that he has a right to it.²⁵

Later in the same work, Mill attempts to explain the nature of these essential interests that are to be regarded as rights: '[T]he moral rules which forbid mankind to hurt one another (in which we must never forget to include wrongful interference in each other's freedom) are more vital to human well-being than any maxims, however important, which only point out the best mode of managing some department of human affairs.'²⁶ Transgression of these moral rules with respect to individuals is what constitutes harm for Mill. They have greater priority than any issue of managing human affairs, even if such management would secure greater autonomy than that offered by Mill's insistence on non-interference in the self-regarding actions of individuals. It is these moralities 'which protect every individual from being harmed by others, *either directly or by being hindered in his freedom of pursuing his own good*, [they] are at once those which he himself has most at heart, and those which he has the strongest interest in publishing by word and deed... *it is these moralities primarily which compose the obligations of justice.*'²⁷ For Mill, then, the good of individuals *as they*

themselves understand it is prior to justice. Injustice, therefore, is anything that contravenes individual's self-defined good:

[T]he most marked cases of injustice, and those which give the tone to the feeling of repugnance which characterises the sentiment, are wrongful aggression, or wrongful exercise of power over someone; the next are those which consist in wrongfully withholding from him something which is his due; in both cases inflicting on him a positive hurt, either in the form of direct suffering, or of the privation of some good which he had reasonable ground, either of a physical or of a social kind, for counting upon.²⁸

In so identifying autonomy and security as the essential interests of individuals, Mill must believe they are to be regarded as more important than straightforward utilitarian criteria such as revealed preferences. Indeed, Mill concludes the chapter by saying:

[J]ustice remains the appropriate name for certain social utilities which are vastly more important, and therefore more absolute and imperative, than any others are as a class... which, therefore, ought to be, as well as naturally are, guarded by a sentiment not only different in degree, but also in kind; distinguished from the milder feeling which attaches to the mere idea of promoting human pleasure or convenience, at once by the more definite nature of its commands, and by the sterner nature of its sanctions.²⁹

To reiterate, then, harm for Mill consists in both direct harm to individuals - such as physical injury or failure to honour contracts - and individuals being prevented from pursuing their own good as they see it – whatever that is. The reason why Mill adopts this conception is that he sees the essential interests we have as human beings contravened by any attempt to prevent us from pursuing our own good in our own way. Hence the necessity for states to be neutral towards individuals having their own conception of the good.

Nonetheless, there remains a substantive conception of the good underlying Mill's neutrality. This conception is developed more explicitly in works such as *Utilitarianism* and *On Socialism*, but elements of Mill's perfectionism are apparent even in *On Liberty*. In *On Liberty*, Mill recognises, that people can be mistaken; or that they can pursue foolish or even wrong personal goods - nevertheless, provided they do not harm others, he argues, they

should be left alone to pursue their own chosen folly. The perfectionist dimension of Mill's idea of harm as harm to the 'essential interests we have as human beings' derives from its instrumentality. Mill demands that governments restrain themselves from prohibiting the harmless folly and wrongdoing of individuals because freedom of choice is only the means to attain a higher good, that of the development of rational, choosing individuals possessed of a fine character. And this constitutes a substantive conception of the good. Indeed in contemporary terms it is perfectionist. The question that I shall address in the next section is how far Mill's perfectionism requires neutrality.

III - *Utilitarianism vs. On Liberty*

Let us see how what Mill says in *Utilitarianism* on these questions compares with what he says in *On Liberty*. In *On Liberty* he is clear that the development of the capacity to enjoy individuality is an historical process. Furthermore it is (therefore) culturally specific: the development of individuality is not available universally, although as a condition it is universally desirable. Not all people at all times have the capacity to be individuals in the Millian sense. Until then,

[D]espotism is a legitimate mode of government in dealing with barbarians, provided the end be their improvement, and the means justified by actually effecting that end. Liberty, as a principle, has no application to any state of things anterior to the time when mankind have become capable of being improved by free and equal discussion. Until then, there is nothing for them but implicit obedience to an Akbar or a Charlemagne, if they are so fortunate as to find one. *But as soon as mankind have attained the capacity of being guided to their own improvement* by conviction or persuasion ... compulsion, either in the direct form or in that of pains and penalties for non-compliance, *is no longer admissible as a means to their own good* and justifiable only for the security of others.³⁰

Mill's thought thus contains an explicit historicist dimension. Despotism is justified if it improves mankind; and liberty is valuable only once people have achieved the capacity to be improved by free and equal discussion. Is the realisation of such a capacity not the

instantiation of an implicit conception of the good? In *Utilitarianism*, Mill describes the ultimate end for all human beings as

... an existence as exempt as far as possible from pain, and as rich as possible in enjoyments, both in point of quantity and quality; the test of quality and the rule for measuring it against quantity, being the preference felt by those who in their opportunities of experience, to which must be added their habits of self-consciousness and self-observation, are best furnished with the means of comparison. This being according also to utilitarian opinion, the end of human action, is necessarily also the standard of morality; which may accordingly be defined, the rules and precepts for human conduct, by the observance of which an existence such as has been described might be, to the greatest extent possible secured to all mankind.³¹

This description clearly sees human existence as having a developmental and historical nature. It is not only enjoyment *per se* that is important for what Mill would see as a worthwhile existence, but the quality of that enjoyment, which is determined by what is valued by rational, choosing individuals who have had the opportunity to experience as wide a range of human pleasures as possible. As people become more experienced, and as they acquire more knowledge within a developing civilisation, so as their values are changed for the better and the content of what counts for them as happiness also changes:

[L]ife would be very poor thing, very ill provided with sources of happiness, if there were not this provision of nature, by which things originally indifferent, but conducive to, or otherwise associated with, the satisfaction of our primitive desires, become in themselves sources of pleasure more valuable than the primitive pleasures, both in permanency, in the space of human existence that they are capable of covering, and even in intensity.³²

The autonomy required to make choices is a much 'thicker' conception than that of a simple capacity to choose between pushpin and poetry. For unless the individuals concerned have had the opportunity to experience both - unless that is, they are no longer 'primitive' - their 'autonomy' will not be of the requisite nature.

The autonomous individual is the *end* of the process of human improvement. But Mill's particular end, like that of many other liberals requires neutrality, or in Raz's terms

restraint,³³ for its achievement. In *On Liberty*, where Mill is seeking to establish a space for the clear development of individuality, he states that '[T]he sole end for which mankind are warranted individually or collectively in interfering with the liberty of any of their number, is self protection.'³⁴ Two points can be made that link this conception to the substantive notion of autonomy to which I have alluded, namely the power to pursue one's own conception of the good, rather than simply freedom from interference. First, it is a normative rule of liberty, that is to say, it prescribes an area within which individuals ought to be free (and by freedom Mill means 'liberty of action', *not* simply freedom from coercion). Second, and related to the first point, although Mill is generally regarded as an advocate of 'negative freedom' - the 'harm principle' is a negative principle defining an area of non-interference - the statement of the principle as outlined above is positive rather than negative. The substantive question of whether Mill is in the end a negative libertarian or not hinges upon the kind of concept of freedom which Mill wishes to see applied within the space delineated by the 'harm principle'. If Mill simply sees that space as one where no one may interfere with the self-regarding actions of another, then Mill is a negative libertarian. In that case he can plausibly be accused of inconsistency, and can be said to be neutral at least between competing individual conceptions of the good. If, on the other hand, Mill wishes to see a positive notion of freedom or autonomy apply in the space delineated by the 'harm principle', then not only is his position consistent, but the conditions he seeks to promote rest on a notion of the good clearly drawn from the political traditions of Britain in the nineteenth century, a conception which includes ideas of duty, personal responsibility and a leadership role for élites. The same tradition also includes ideas of self-help, and the ability of individuals to transcend adverse circumstances by their own efforts. However, most significant of all as far as Mill's teleological doctrine is concerned, individuals brought up in that tradition were 'capable of being improved by free and equal discussion'.³⁵

A number of interpretations have been offered of Mill's position on this. H.J. McCloskey³⁶ argues that though Mill starts out with 'doing what one wants' as his 'official' definition of liberty, he quickly develops a much more positive notion. R.B. Friedman maintains that the typical liberal idea of freedom according to which 'the agent's own desires are taken as given data, and he is understood to be free if no one restrains him from giving effect to them', is accompanied by a positive conception of freedom embodying a moral ideal of unservile self-assertion. Friedman goes on: 'men are thought of as unfree not essentially because of the coercive interference of *other men*, but instead because they 'do not desire liberty', and servility is not, on this view, a feature of the relations among men, but rather an 'attribute of character'.³⁷ Reasons for scepticism about Mill's adherence to negative freedom are easy to find. One of his major preoccupations in *On Liberty*, set out with admirable clarity in the introductory chapter, is with the rise of democratic conformism. But if freedom is construed simply as a matter of unfrustrated want satisfaction, how can Mill depict conformity as the insidious threat to liberty that he does? The conformist is precisely someone who wants to do only whatever he or she is permitted to do. The core of Mill's position here is probably best described by Berlin: 'Mill believes in liberty, that is, the rigid limitation of the right to coerce, because he is sure that men cannot develop and flourish and become fully human unless they are left free from interference by other men within a certain minimum area of their lives, which he regards as - or wishes to make - inviolable.'³⁸ In other words, to realise his perfectionist goals, Mill's theory demands the existence of a degree of neutrality not only between competing conceptions of the good but also between the good and modes of existence that Mill would regard as being unequivocally bad.

Let us explore why this is necessary. Berlin has here identified the essential theme of *On Liberty*, that individuality or self-development cannot be realised without freedom to pursue alternative conceptions of the good, and to do that two conditions are required: first,

individuals must have knowledge of such alternatives; and second, the state must restrain itself from restricting the conceptions of the good individuals are allowed to pursue. These two ideas are worked out in Mill's idea of freedom, and both are necessary components of his 'perfectionist' view of individuals and society. Berlin's 'rigid limitation of the right to coerce' refers to the 'harm principle'; freedom in this negative sense is for Mill a necessary condition of individuality. In his *Two Concepts of Liberty*, Berlin, whilst attributing a negative conception of liberty to Mill, goes on to insist that this concept is in fact inadequate for use by genuine liberals:

[I]f I find that I am able to do little or nothing of what I wish, I need only contract or extinguish my wishes, and I am made free. If the tyrant (or 'hidden persuader') manages to condition his subjects (or customers) into losing their original wishes and embrace ('internalise') the form of life he has invented for them, he will on this definition, have succeeded in liberating them. He will, no doubt, have made them *feel* free....But what he has created is the very antithesis of political freedom.³⁹

If this form of negative liberty is what Mill meant by freedom, however, then the 'harm principle' could not possibly function as Berlin claims Mill intends. It could not guarantee, or even encourage, the achievement of individuality, because it would inevitably lead to the passive acceptance of social conformity, since constraints could all too easily be perceived as freedoms: the person imprisoned by a tyrant, who nonetheless 'feels free', for instance. Such an acceptance would ensure that autonomy could never be achieved, let alone enjoyed, because the acceptance of conformity must limit the range of experience and experiments in living needed if the higher pleasures are first to be identified and later enjoyed. Mill must reject such a concept of freedom because it would mean that anyone whose desires had been ironed into conformity would be just as free as one of his rational choosing individuals.

Mill believes in the individual's right to a sphere of freedom, but as Berlin notes, he is also convinced that 'man differs from animals primarily neither as a possessor of reason, nor as an inventor of tools and methods, but as a being capable of choice'.⁴⁰ By 'choice', Mill must

mean rational and informed choice: for otherwise, again, there would be no difference in value between choosing pushpin and poetry. The conception of freedom actually at work in *On Liberty* is intelligible only against the particular view of human beings as beings who need autonomy to secure happiness. The effective conception of freedom in *On Liberty* must be freedom as real, or positive, freedom of choice, not freedom as merely unfrustrated want satisfaction. Were this not so, Mill would not have spent so much time in that work condemning the conformity induced by social pressure; nor would he have explicitly condemned the conformist tendencies of democracies in his review of Tocqueville's *Democracy in America*,

... where the majority is the sole power, and a power issuing its mandates in the form of riots, it inspires a terror which the most arbitrary monarch often fails to excite. The silent sympathy of the majority may support on the scaffold the martyr of one man's tyranny; but if we would imagine the situation of a victim of the majority itself, we must look to the annals of religious persecution for a parallel.⁴¹

It could of course be argued that real, or positive, freedom of choice is still a fundamentally negative concept of liberty. Someone who enjoys freedom of choice is simply someone faced with a range of uncoerced opportunities and the larger the range, the greater the freedom. This, however, ignores the complications introduced by the idea that options are available only to beings capable of rational choice. For although it is possible to accommodate this dimension of free agency by simply stipulating that all human beings, except extreme cases such as infants, the certifiably insane, or the mentally subnormal, are to be assumed to enjoy powers of rational judgement and decision - so that the question of freedom remains restricted to visible and external impediments on human actions - this presents a further problem. Again a comparison with Berlin is germane. Berlin is reluctant to incorporate questions of rationality into his concept of freedom as choice because the notion of rationality in general, and the rational will in particular, is linked with the positive variant of liberty which he rejects. Berlin thinks that the positive idea of freedom is underlain by a

monist and rationalist conception of the good. According to Berlin, the Hegelian or Platonic idea of freedom consists not in choice, but in obedience to the rational will - whereas choice presupposes genuine rivalry between conflicting goods, rational will points to one, and only one, course of action, one form of life, for the individual. Mill refuses to recognise the validity of social rights for precisely the same reasons: such a doctrine would mean that individuals only have a right to act in their own rational, or in society's, interest. It would follow from this that others might have a right to coerce them on the basis of a more accurate discernment of their own, or society's, one true interest. For Mill, given his critique of social rights in *On Liberty* - and indeed for Berlin too - this would be unacceptable. Furthermore, Mill explicitly denies such a position when he says in that 'the only purpose for which power can be rightfully exercised over any member of a civilised community against his will, is to prevent harm to others. *His own good*, either physical or moral is not a sufficient warrant. He cannot rightfully be compelled to do or forbear... because in the opinion of others it would be wise or even right.'⁴²

Mill's position, then, appears to be that whilst freedom is more than the absence of external constraints, the absence of external constraints is nonetheless its necessary condition. Once people have 'attained the capacity of being guided to their own improvement by conviction or persuasion',⁴³ then under no circumstances are external constraints to be placed in their path, even if such constraints would promote the more positive dimension of freedom.

How then can Mill achieve his 'perfectionist' goals? The answer can be found in his doctrine of the higher pleasures, and its relationship with his thoughts on freedom of choice. Mill objects to blind conformity to custom, for the sake of custom, because there is an absence of choice: 'to conform to custom merely as custom does not educate or develop any of the qualities which are the distinctive endowments of a human being. The human faculties of

perception, judgement, discriminative feeling, mental activity, and even moral preference are exercised only in making a choice.⁴⁴ Our end is to fully achieve our human nature. We cannot do that unless we develop the qualities that are exercised in making informed rational choices between competing conceptions of the good. Individuals can then make rational informed choices between, for example, poetry and visual art, rather than between pushpin and pornography. Mill believes that individuals who do not, or who are unable to, exercise this distinctively human capacity for choice, have lost that which is distinctively human: because that is what marks us out from the rest of nature.⁴⁵ Animals cannot have a purpose other than survival. Machines cannot have a purpose, but are designed by human beings to serve the purposes of human beings. Once a machine has been built which successfully serves its purpose, copies of it will be just as good as the originals. Humans, however, are different: '[H]uman nature is not a machine to be built after a model, and set to do exactly the work prescribed for it, but a tree, which requires to grow and develop itself on all sides, according to the tendency of the forces which make it a living thing.'⁴⁶

So, even if a template for a perfect human being could be devised, not all human beings would be of equal worth even if they were compelled to conform to it:

[I]t is possible that he [a human being] might be guided in some good path, and kept out of harms way... But what will be his comparative worth as a human being? It really is of importance, not only what men do, but also what manner of men they are that do it. Among the works of man which human life is rightly employed in perfecting and beautifying, the first in importance is man himself.⁴⁷

'Man himself' is lost in the forced imitation by human beings of ideal models, however worthy. It is considered choice between alternatives which allows the development of truly human potentialities:

[H]e who lets the world, or his own portion of it, choose his plan of life for him has no need of any other faculty than the ape-like one of imitation. He who chooses his plan for himself employs all his faculties. He must use observation to see, reasoning and judgement to foresee, activity to gather materials for decision, discrimination to decide,

and when he has decided, firmness and self-control to hold his deliberate decision. And these qualities he requires and exercises exactly in proportion as the part of his conduct which he determines according to his own judgement and feelings is a large one.⁴⁸

People who make choices develop a 'character'; their desires and feelings are the products of their own conscious choices, they will have experienced the consequences of previous choices and will have developed judgement and discrimination with respect to the higher and lower pleasures. But what are the alternatives in question? Mill opposed the type of conformism that developed in democracies in his time because he believed they circumscribed choice. In his review of Tocqueville's *Democracy in America*, he is scathing about both the dominance of public opinion, where 'speculation becomes possible only within the limits traced by our free and enlightened citizens and our free and enlightened age': and the state of American 'products of the intellect'.⁴⁹ This critique sheds light on the nature of the choices to which Mill is referring. Mill says of American works of art that, '[D]istracted by so great a multitude, the public can bestow but a moments attention on each; they will be adapted chiefly for striking at the moment. Deliberate approval, and duration beyond the hour, become more and more difficult of attainment.'⁵⁰ He goes on:

[L]iterature thus becomes not only a trade, but is carried on by the maxims usually adopted by other trades which live by the number, rather than by the quality of their customers; that much pains need not be bestowed on commodities intended for the general market, and that which is saved in the workmanship may be more profitably expended in self-advertisement. There will be an immense mass of third- or fourth-rate productions and very few first-rate.⁵¹

What Mill is arguing here is that what matters is not the range of the choices available, but their quality. This positive conception of choice implies that he is appealing to a notion of the good within the space of non-interference delineated by the 'harm principle'. He is convinced that no one who has reached a stage of moral and intellectual development where they can enjoy and appreciate the 'higher pleasures' would be content with the lower.⁵² Choice, therefore, is not just valuable *per se*, as in choosing whether to get drunk or go to a

concert; rather it is valuable because once people have chosen to pursue the higher pleasure, i.e. going to a concert, they will recognise that it is more worthwhile. To develop truly human qualities, and hence individuality, people must freely choose in favour of the higher pleasures, and reject the lower. However, it is by no means clear that if left to their own devices individuals will pursue the higher pleasures. What Mill seeks to do in developing his ideas, then, is show why people would adopt the higher pleasures ahead of the lower. If Mill's doctrine of the higher pleasures and why individuals would select them ahead of the lower is at all plausible, then his advocating the use of governmental restraint to achieve perfectionist goals itself becomes plausible. In the next section I shall attempt to ascertain just how successful or convincing Mill's doctrine of the higher pleasures is as a means of realising his perfectionist goals.

IV - Pleasure, conformism and the 'good of humanity'

In *On Liberty*, Mill paints a devastating picture of the effects of conformism:

[I]n our times, from the highest class of society down to the lowest, everyone lives under the eye of a hostile and dreaded censorship. Not only in what concerns others, but in what concerns only themselves, the individual or the family do not ask themselves, what do I prefer? or, what would suit my character and disposition? or, what would allow the best and highest in me to have fair play and enable it to grow and thrive? They ask themselves, what is suitable to my position? what is usually done by persons of my station and pecuniary circumstances? or (worse still) what is usually done by persons of a station and circumstances superior to mine? I do not mean that they choose between what is customary in preference to what suits their own inclination. It does not occur to them to have any inclination except for what is customary. Thus the mind itself is bound to the yoke: even in what people do for pleasure, conformity is the first thing thought of; they like in crowds; they exercise only among things commonly done; peculiarity of taste, eccentricity of conduct are shunned equally with crimes, until by dint of not following their own nature they have no nature to follow: their human capacities are withered and starved; they become incapable of any strong wishes or native pleasures, and are generally without either opinions or feelings of home growth, or properly their own. Now is this, or is it not, the desirable condition of human nature?⁵³

Such conformist individuals are free inasmuch as they are not suffering interference with

their self-regarding actions; but they are not free in Mill's more positive sense, because they are not using their capacities to exercise true freedom of choice. But what makes choice worthwhile? For Mill, there are two dimensions of a worthwhile choice: on the one hand, the choices that are made; and on the other, how those choices are made. The first dimension involves freely choosing the higher pleasures ahead of the lower. Mill believes that '... no intelligent human being would consent to be a fool, no instructed person would be an ignoramus, no person of feeling and conscience would be selfish and base, even though they should be persuaded that the fool, the dunce, or the rascal is better satisfied with his lot than they are with theirs'.⁵⁴ But, what makes a pleasure a higher pleasure? In *Utilitarianism* Mill writes: 'It is quite compatible with the principle of utility to recognise the fact, that some *kinds* of pleasure are more desirable and more valuable than others. It would be absurd that while, in estimating all other things, quality is considered as well as quantity, the estimation of pleasures should be supposed to depend on quantity alone.'⁵⁵ Mill then equates the quality of pleasures with their kind:

[W]hat is there to decide whether a particular pleasure is worth purchasing at the cost of a particular pain, except the feelings and judgement of the experienced? When, therefore, those feelings and judgement declare the pleasures derived from the higher faculties to be preferable *in kind*, apart from the question of intensity, to those which the animal nature, disjoined from the higher faculties, is susceptible, they are entitled to be subject to the same regard.⁵⁶

So how can the quality of pleasure be measured? Mill argues as follows:

[I]f I am asked, what I mean by difference of quality in pleasures, or what makes one pleasure more valuable than another, merely as a pleasure, except its being greater in amount, there is but one possible answer. Of two pleasures, if there be one to which all or almost all who have experience of both give a decided preference irrespective of any feeling of moral obligation to prefer it, that is the more desirable pleasure. If one of the two is, by those who are competently acquainted with both, placed so far above the other that they prefer it, even though knowing it to be attended with a greater amount of discontent, and would not resign it for any quantity of the other pleasure which their nature is capable of, we are justified in ascribing to the preferred enjoyment a superiority in quality, so far outweighing quantity as to render it, in comparison, of small account.⁵⁷

The point, then, is that it is those individuals who have undergone development and self-development who are in the best position to make judgements about the quality of pleasures. Mill bases his argument for this position on the reluctance of those who have undergone development to sink back into a trough of stupidity or ignorance. Despite Mill's believing that beings of higher faculties require more to make them happy, and are capable of more complete suffering, he is certain that they would not wish to exchange their condition for that of someone or something of lesser faculties: '[I]t is better to be a human being dissatisfied than a pig satisfied; better to be Socrates dissatisfied than a fool satisfied. And if the fool or the pig, are of a different opinion, it is because they only know their own side of the question. The other party to the comparison knows both sides.'⁵⁸ The difference between the fool and Socrates is an awareness of potential and an ability to compare. An intelligent, informed being will have developed their capacities to such an extent that they are capable of autonomous choice among higher pleasures, and between higher and lower pleasures. So Mill's procedure for determining the value of pleasures involves ascertaining the preferences of those who are deemed to be competent judges.

This brings in the second dimension of Mill's conception of worthwhile choices. How and why do some people become competent judges? Education plays a vital role here; it is the process by which individuals become sufficiently developed to be able to distinguish between higher and lower pleasures. Development consists in the inculcation of objective standards for judging the value of happiness; these standards teach individuals to distinguish between, and evaluate, different pleasurable experiences. Teaching offers models that allow individuals to discover and appreciate what it is about species of pleasure that makes them worth pursuing. It is their development as an individual that influences what a competent judge will find in a higher pleasure. Such personal development can occur only when conditions allow individuals to have experience of choosing amongst a wide range of

options. Once they have had that experience, Mill believes, they will have developed in such a way that they will prefer the higher pleasures ahead of the lower. The picture that emerges of Mill's individual, then, is of a person who is the product of a tradition that encourages experiment, self-help and self-improvement. People brought up within that tradition are capable of self-improvement because they all pursue different, and sometimes competing, conceptions of the good. Some of the goods pursued will be representative of the higher pleasures; once these have been experienced, Mill believes, individuals will thirst for more. The result of these positive choices will be the establishment of what Mill - and other nineteenth century theorists such as Matthew Arnold, Samuel Smiles and John Morley⁵⁹ describe as a character. A person who has developed such a character is not hidebound by custom; nor is he or she a slave to the baser passions. They are capable of being improved by rational argument and discussion. Moreover, they represent precisely the individuality that Mill sees as the ideal.

In the preceding discussion of the 'harm principle' I outlined Mill's negative case for individuality: his doctrine of character offers positive arguments for that ideal. Liberty allows the greatest potential for human progress; hence liberty is claimed to be instrumentally better than any circumstances that inhibit human potential. Yet much of Mill's argument here is aesthetic rather than consequentialist (and thus utilitarian). Mill's critique of Bentham makes this clear: '[M]an is never recognized by him [Bentham] as a being capable of pursuing spiritual perfection as an end; of desiring for its own sake, the conformity of his own character to his standard of excellence, without hope of good or fear of evil from other sources than his own inward consciousness.'⁶⁰ His justification of the intrinsic value of individuality is difficult to pin down, but his most clearly developed attempt to offer such a justification comes in the final chapter of *A System of Logic*.⁶¹ He begins by drawing a general distinction between art and science. Science is defined as

'inquiries into the course of nature'.⁶² That part of moral philosophy that deals with the natural consequences of actions (including those that relate to human nature) is a science. But that part of it which deals in ultimate ends, or precepts, lies in the realm of art. The relation between the realm of art and the realm of science can be characterised thus:

... the art proposes to itself an end to be attained, defines the end, and hands it over to the science. The science receives it, considers it as a phenomenon or effect to be studied, and having investigated its causes and conditions, sends it back to art with a theorem of the combination of circumstances by which it could be produced. Art then examines these combinations of circumstances, and according as any of them are or are not in human power, pronounces the end attainable or not.⁶³

Art, which can be appreciated only through the development of character and judgement, tells individuals what given ends are desirable. The result is the enhancement and progress of humanity as a whole:

... by cultivating it [individuality] and calling it forth, within the limits imposed by the rights and interests of others, ... human beings become ... noble and beautiful object[s] of contemplation; and as the works partake the character of those who do them, by the same process human life also becomes rich, diversified, and animating, furnishing more abundant aliment to high thoughts and elevating feelings,⁶⁴

Mill *values* individuality because it improves mankind and acts as a motor to progress. It ensures that not only the quality, but also the quantity, of happiness is increased. But is this also the reason Mill gives in defence of individuality? On this Mill is ambivalent. In *Utilitarianism* he insists that '[Q]uestions of ultimate ends are not amenable to direct proof'.⁶⁵ Then Mill says - famously - that

...the sole evidence it is possible to produce that anything is desirable is that people do actually desire it. If the end which the utilitarian doctrine proposes to itself were not, in theory and in practice, acknowledged to be an end, nothing could ever convince any person that it was so. No reason can be given why the general happiness is desirable, except that each person, so far as he believes it to be attainable, desires his own happiness. This, however, being a fact, we have not only all the proof which the case admits of, but all of which it is possible to require, that happiness is a good: that each person's happiness is a good to that person, and the general happiness, therefore, a good to the aggregate of all persons. Happiness has made out its title as *one* of the ends of conduct, and consequently one of the criteria of morality.⁶⁶

Now, let us accept for the time being that Mill is the utilitarian he claims to be. He has proved by way of an arguably, but perhaps not necessarily viciously, circular argument that happiness is desirable because individuals desire it.⁶⁷ Why, then, does Mill believe that the development and protection of individuality is the key to promoting the greatest happiness for the greatest number? In an apparently contradictory section in *A System of Logic*, Mill first commits himself to the principle of utility: 'I ... declare my conviction, that the general principle to which all rules of practice ought to conform, and the test by which they should be tried, is that of conduciveness to the happiness of mankind, or rather, of all sentient beings: in other words, that the promotion of happiness is the ultimate principle of Teleology.'⁶⁸ But he immediately qualifies this statement in such a way as to suggest that he is to be taken as a rule utilitarian:

I do not mean to assert that the promotion of happiness should be itself the end of all actions or even of all rules of action. It is the justification, and ought to be the controller of all ends, but it is not in itself the sole end. There are many virtuous actions, and even virtuous modes of action, ... by which happiness in the particular instance is sacrificed, more pain being produced than pleasure. But conduct of which this can be truly asserted admits of justification only because it can be shown that on the whole more happiness will exist in the world if feelings are cultivated which will make people, in certain cases, regardless of happiness.⁶⁹

Mill then goes on to argue that the good of humanity as a whole is best served if human beings take for their ultimate aim the development of what is best in themselves, irrespective of whether this would promote the happiness of the individual, or indeed the happiness of humanity. How then can Mill still claim to be a utilitarian, when he says the 'cultivation of an ideal nobleness of will and conduct' should not be subordinate to the individual or collective pursuit of happiness?⁷⁰ The point is that Mill values excellence of character in the same way as he values individuality, the pre-condition for developing a character: that is he values both solely as a condition of happiness. However, this is not simply happiness in the sense of the lower pleasures and absence of pain, but rather the happiness that comes from nobleness of character:

[T]he character itself should be, to the individual, a paramount end, simply because the existence of this ideal nobleness of character, or of a near approach to it, in any abundance, would go further than all things else towards making human life happy, both in the comparatively humble sense of pleasure and freedom from pain, and in the higher meaning of rendering life, not what it now is almost universally puerile and insignificant, but such as human beings with highly developed faculties can care to have.⁷¹

Mill, insofar as he is concerned with individuals pursuing fineness of character for its own sake and no other, in this remains utilitarian. Mill clearly believes that the development of fineness of character is likely not only to promote the happiness of the individual concerned, but also the happiness of those around them. Developing a character is a surer way than adopting a felicific calculus of becoming a practically wise agent and promoting the public happiness.

Mill's objectives are not neutral between different conceptions of human flourishing. His aim is what is now termed a perfectionist one, it is to establish a society where, through education, individuals develop fine, well-rounded characters in which intellectual rigour coexists with imagination, liveliness and prudent judgement. Such qualities are desirable, both because they are grounds for happiness in themselves, and because people who possess such qualities are likely to be more sympathetic to others, and hence promote their happiness.

Where does this leave Mill's neutrality? His adherence to neutrality is based on the idea of lexical priorities.⁷² He recognises that individual, self-regarding actions can and do damage the wider development of individuality; but coercion of individuals, once they have reached a certain stage of historical development, can do more harm to this ultimate goal than any harm done by individual actions. However, this leaves open the possibility of using non-coercive persuasion and leadership by élites to protect and promote conditions that allow

individuality to flourish. So although the use of coercion is forbidden to achieve perfectionist goals, non-coercive methods manifestly are not.

Although self-regarding acts may not be interfered with, nonetheless, if such acts 'are hurtful to others or wanting in due consideration for their welfare, without going to the length of violating any of their constituted rights,' then the individual may be 'justly punished by opinion though not by law'.⁷³ Mill also makes clear that individuals who pursue 'animal pleasures at the expense of those of feeling and intellect'⁷⁴ must expect to be judged unfavourably by their fellows. He believes that it would be doing such a person a favour to warn and persuade them against committing any acts that would result in justifiable public opprobrium. Moreover, individuals who indulged in the lower pleasures at the expense of the higher will be, and indeed should be, subject to the spontaneous penalties of society:

[W]e have a right, also in various ways, to act upon our unfavourable opinion of anyone, not to the oppression of his individuality, but in the exercise of ours. We are not bound, ...to seek his society; we have a right to avoid it...for we have a right to choose the society most acceptable to us. We have a right, and it may be our duty, to caution others against him if we think his example or conversation likely to have a pernicious effect on those with whom he associates. We may give others a preference over him in optional good offices, except those which tend to his improvement. In these various modes a person may suffer very severe penalties at the hands of others for faults which directly concern only himself; but he suffers these penalties only in so far as they are the natural, and, as it were, the spontaneous consequences of the faults themselves, not because they are purposely inflicted on him for the sake of punishment.⁷⁵

Mill is saying that if people choose to prefer the lower pleasures over the higher, if they behave in ways which will not lead them to develop 'fineness of character', then they must, at best, be persuaded of the error of their ways; and at worst, if they still refuse to conform to his ideals, then they may be justifiably shunned by the rest of society. Mill's neutrality, then, is not an end in itself, but a means to achieving his goal of a society of rationally choosing individuals, which in turn, is his utilitarian way of indirectly achieving the greatest happiness for the greatest number.

That this really is Mill's position is confirmed by his argument on slavery. The act of an individual's selling him- or herself into slavery must be a self-regarding act. It affects the essential interests of no one but the person who has agreed to be a slave. It could, of course, be argued that by doing so the individual concerned was damaging the well-being of the wider society by their act: but so, in Mill's view, were drunkards, gamblers and fornicators, and he insisted that they should not be punished for their actions beyond public censure. The act of selling one's self into slavery though is different from those because

[T]he reason for not interfering, unless for the sake of others with a person's voluntary acts is consideration for his liberty. His voluntary choice is evidence that what he so chooses is desirable, or at least endurable, to him, and his own good is on the whole best provided for by allowing him to take his own means of pursuing it. But by selling himself for a slave, he abdicates his liberty; he forgoes any future use of it beyond that single act. He therefore, defeats, in his own case, the very purpose that is the justification of allowing him to dispose of himself. He is no longer free, but is thenceforth in a position which has no longer the presumption in its favour that would be afforded by his voluntarily remaining in it. The principle of freedom cannot require that he should be free not to be free. It is not freedom to be allowed to alienate his freedom.⁷⁶

On the one hand this position seems inconsistent, in that it limits the right of individuals to undertake self-regarding acts without interference. But in the light of previous discussions of the relationship between Mill's principle of utility and the higher pleasures, it is remarkably consistent. Freedom, although of some intrinsic value, is fundamentally to be seen as the instrument by which human beings attain individuality. That is how they become rational choosing individuals and possessors of Mill's fine character. The possessors of such characters are not only happy in themselves, but they are more likely to promote happiness amongst their fellow human beings. Thus if Mill is to be read as offering a consistent view of the value of individuality, he must also be seen as regarding liberty not as an end in itself, but the means to the end of fine character.

This is the conception of the good that is implicit in Mill's thought. His neutrality is not like

that of deontological liberals such as Rawls, who declare that the 'right is prior to the good'; rather it is neutrality with regard to the means whereby the good is to be achieved. For Mill, the good is prior to the right, since the latter is a question of the efficiency of the actions concerned in helping to achieve the good. In all cases where choices are made that still allow people to retain freedom, that is the means to their good, and they are not to be interfered with other than by persuasion. However, in a case such as making a choice to become a slave, where the choice cuts off any hope of attaining the good, then that act is prohibited. Mill's ultimate good is the true happiness that comes from individuality and a fine character and Mill defends liberty because it is the means to that particular end.

V - Mill and Conservatism

In Chapter 1 I outlined the ways in which liberalism has a tendency to use conservative forms of argument and a conservative epistemology to justify its core value of autonomy. In the remainder of this chapter I shall show how this is also the case with Mill. Just to reiterate I argued that liberals use conservative forms of argument. In this form of argument liberals state that these liberal values are ours. We have found much utility in them and we will not change them unless there is overwhelming evidence that they are damaging, and even then we will retain as much as possible of our own values in any new system. Liberalism becomes politically conservative because of its cultural specificity; a specificity that recognises that liberalism can only flourish within a certain matrix of manners, morals laws and institutions. It therefore falls back in its self-justification on the conservative sceptical justification of political activity.

Mill uses a conservative form of argument in that his justification of autonomy and individuality rests not on universalist empirical or *a priori* arguments, but on their being

desired by individuals deemed to be good judges within societies whose political and social traditions are compatible with liberalism. Mill is adamant that the happiness that comes from individuality and a fine character is worthwhile only because people desire them and having experienced them would not willingly return to a previous condition. On the other hand, people who do not desire these suffer from a lack of development. What, then, comes first? In the end his position is an empirical one: his 'good' is desirable because people desire it. This is surely the antithesis of what liberalism is supposed to be about. The liberal project is predicated on the idea that it is possible to form a social order in which individuals could emancipate themselves from the contingency and particularity of tradition by appealing to genuinely universal tradition-independent norms.⁷⁷ By his insistence that ultimately the only evidence we have that something is desirable is that people desire it, Mill is abandoning the liberal quest for universal foundations because, as he recognises with his concern for the development of democratic conformity in the USA and elsewhere, what people, as a matter of fact, desire is socially conditioned. What Mill does not grasp is that if desires in general, are a product of the social context then so is the particular desire that he wishes to see encouraged, namely the desire for individuality. Nevertheless his acceptance of the argument that desires, including the desire for individuality, are socially conditioned, is clear evidence of Mill adopting a conservative form of argument.

What of the idea of Mill as being politically conservative, in the sense of writers like Oakeshott? Evidence that Mill might adopt politically conservative prescriptions can be found in the essays on Bentham and Coleridge⁷⁸. In his Essay on Bentham Mill offered a critique of what he believed was the moral and spiritual vacuum at the heart of Benthamite utilitarianism. He criticised Bentham for reducing human nature to the level of interests and passions at the expense of conscience, character and moral sense. Moreover, he argued that Bentham was guilty of subverting those forces in society on which morality depended.

Thinking logical clarity to be everything, Bentham had dismissed as 'vague generalities' the entire moral history and experience of mankind. Mill condemned this view stating: 'It must be allowed that even the originality which dares think for itself is not a more necessary part of the philosophical character than reverence for previous thinkers, and for the collective mind of the human race.'⁷⁹ Lacking any respect for tradition, Bentham also failed to recognise the existence of 'national character', the collective spirit which alone 'enables any body of human beings to exist as a society,' which causes one nation to fail, one to 'aspire to elevated things, another to grovel in mean ones.' Bentham's philosophy might be appropriate for the 'business' part of life; but it was totally inappropriate for the moral and spiritual side.⁸⁰

In his *Essay on Coleridge*, Mill carried these ideas still further, criticising not only Bentham but the French *philosophes* for adopting a wholly critical and negative stance toward society. Instead of attacking the old regime for failing to provide the essential conditions of a durable order, for 'sapping the necessary foundations of society', the *philosophes* exulted that these foundations were being destroyed:

In the weakening of all government they saw only the weakening of bad government; and thought they could not better employ themselves than in finishing the task so well begun - in expelling out of every mind the last vestige of belief in that creed on which all the restraining discipline recognised in the education of European countries still rested, and with which in the general mind it was inseparably associated; in unsettling everything that was considered settled, making men doubtful of the few things of which they felt certain; and in uprooting what little remained in the people's mind of reverence for anything above them, of respect to any of the limits which custom and prescription had set to the indulgence of each man's fancies or inclinations, or of attachment to any of the things which belonged to them as a nation, and which made them feel their unity as such.⁸¹

Burke himself would have been comfortable with such a critique, and there are in fact strong echoes in Mill's critique of the French Revolution in the *Essay on Coleridge* of Burke's *Reflections on the Revolution in France*. For instance, Burke's appeal to the 'little platoon'⁸²

as the basis for allegiance offers, at the very least, a parallel to the views of Mill cited above on nationality. Moreover it is in opposition to the negative, subversive, philosophy of the French Revolution – as he sees it - that Mill posits the essential conditions for a permanent political society:

In all political societies which have had a durable existence, there has been some fixed point; something which men agreed in holding sacred; which might or might not be lawful to contest in theory, but which no one could either fear or hope to see shaken in practice; which in short (except perhaps in some temporary crisis), was in the common estimation placed above discussion. And the necessity of this may easily be made evident. A state never is, nor, until mankind are vastly improved, can hope to be, for any long time exempt from internal dissension; for there neither ever is nor ever has been any state of society in which collisions did not occur between the immediate interests and passions of powerful sections of the people. What, then, enables society to weather these storms, and pass through turbulent times without any permanent weakening of the ties which hold it together? Precisely this - that however important the interests about which men fall out, the conflict does not affect the fundamental principles of the system of social union which happen to exist; nor threaten large portions of the community with the subversion of that on which they have built their calculations, and with which their hopes and aims have become identified. But when the questioning of these fundamental principles is (not an occasional disease, but) the habitual condition of the body politic; and spring naturally from such a situation, the state is virtually in a state of civil war; and can never long remain free from it in act and fact.⁸³

Mill has here identified three essential conditions necessary for permanent political society: allegiance, education and nationality. One of them, allegiance, is 'above discussion',⁸⁴ which suggests that Mill's is a very conservative liberalism, and one which would definitely link him closely to writers like Burke who also see allegiance to the state as imperative and to be abrogated only in extreme circumstances. However, it is Mill's views on nationality which see him at his most conservative. He sees nationality as a positive idea because it expresses a sense of sympathy rather than hostility, of union rather than separation. It is the 'feeling of common interest' which tied together those with a common polity, history, and geography, which made them cherish that tie, feel that they were one public indissolubly bound together.⁸⁵ What Mill is arguing here is that the ties that bind a polity rest on feelings of affection rather than on self-interest. But this is exactly what Burke and Oakeshott rest their

ideas of allegiance upon. Burke notes;

... we have given to our frame of polity the image of a relation in blood; binding up the constitution of our country with our dearest domestic ties; adopting our fundamental laws into the bosom of our family affections; keeping inseparable, and cherishing with the warmth of all their combined and mutually reflected charities, our state, our hearths, our sepulchres, and our altars.⁸⁶

Similarly, Oakeshott characterises the conservative disposition thus:

The general characteristics of this disposition ... centre upon a propensity to use and enjoy what is available rather than to wish for or look for something else; to delight in what is present rather than what was or what may be. Reflection may bring to light an appropriate gratefulness for what is available, and consequently the acknowledgement of a gift or an inheritance from the past; but there is no mere idolizing of what is passed and gone.⁸⁷

The nature of government that is derived from such a disposition must be limited, for if it were more activist it would destroy the conditions which have been discovered to be so valuable. As Oakeshott says, '... governing is recognized as a specific and limited activity; not the management of an enterprise, but the rule of those engaged in a great diversity of self-chosen enterprises; and with activities only in their propensity to collide with one another'.⁸⁸

Given that Mill also desires to see limited government it is easy to see the connections between his use of a conservative form of argument and the conservative substantive arguments that emerge from it. However, whereas Mill takes an indirectly perfectionist approach to government and society, a sceptical conservative such as Oakeshott would not. The perfectionist strand in Mill's thought is apparent from his earliest writings. In a speech on 'Perfectibility' in 1828,⁸⁹ Mill asks whether the moral character of individuals can be improved. His answer is that it could be if two forces were brought to bear upon individuals: a sound moral education in their early years and the 'insensible influence of the world, of society, and public opinion upon their habits and associations in after life'.⁹⁰ If some men

were morally inferior to others, it was either because their education had been faulty, or because the influence of public opinion had been insufficient. And Mill interpreted public opinion in the largest terms, as representing the opinion not of the group immediately surrounding the individual but of society at large. He advised that men be removed from the 'opinion of their private and separate coteries' and made 'amenable to the general tribunal of the public at large'. Only if that were done, if public opinion itself were elevated to a higher moral level by a proper system of education, and if that public opinion exercised the influence it was capable of, could a 'high state of general morality' be attained.⁹¹ By contrast, conservatism is a doctrine of *imperfection*. Oakeshott, for example, argues that political society is not 'concerned with moral right and wrong' and its business is not to 'make men good or even better'.⁹² In fact it is this perfectionism that distances Mill most from sceptical conservative prescriptions: nonetheless Mill recognises the importance of values like allegiance and affection in the maintenance and establishment of political societies. The tension in Mill's thought then is not so much between his perfectionism and his neutrality – a tension in which, as I have argued it is his perfectionism that wins out – but between his conservatism and his perfectionism.

Where does this leave the normative foundations of Mill's thought? He wishes to see the maintenance and development of rationally choosing individuals, but offers no non-circular defence of the desire of people to become such individuals; he simply observes that they do indeed desire to do so. In other words, they have a prejudice in favour of the establishment of individuality, because, according to Mill, they believe, or at least those qualified to judge believe, that true happiness lies in individuality. The only justification he offers of this is that individuality is a quality that at least some – developed – people have, as a matter of fact, been found to enjoy and that therefore we should have a predisposition in its favour. The reason for that predisposition is simply that people have enjoyed the experience of

individuality.⁹³ Mill's normative foundation amounts, then, to this: individuality is good because people enjoy it. However, individuality itself and its enjoyment was not something that appeared out of the blue on the eve of July 14th 1789 or even November 5th 1688; rather it was the development of a long historical process which allowed the development of traditions institutions and attitudes which held that individuality was a good.⁹⁴ This is the defence of something on the grounds that it has existed, and because people have found much to enjoy in it: it is a classical conservative defence of institutions, traditions or modes of life - as Mill himself recognises in his strictures against conformity. Of course, and despite accurately perceiving the historically grounded nature of the liberal tradition, Mill does not himself draw the conservative inference that to preserve and encourage individuality, it is necessary to preserve and maintain existing traditions and institutions lest the conditions which allow individuality to flourish be lost. Had he been consistent he would have had to drop either his perfectionism or his neutrality of justification. To do the first would have been to leave his liberalism without justification (that is to say in just the position liberalism finds itself today). To do the second would have been to give up on liberalism, a liberalism he can maintain only at the cost of inconsistency.

¹ John Stuart Mill, *On Liberty*, p158.

² John Gray, *Mill on Liberty: A Defence*, Second Edition (Routledge, London, 1996).

³ See for example, J.D. Mabbott, 'Interpretations of Mill's Utilitarianism' in P. Foot (ed) *Theories of Ethics* (Oxford University Press, Oxford, 1967), pp137-143.

⁴ See, for example, J.O. Urmson, 'The Interpretation of the Moral Philosophy of John Stuart Mill', in P. Foot (ed) *Theories of Ethics*, pp128-136, and J. J. C. Smart & Bernard Williams, *Utilitarianism For & Against* (Cambridge University Press, Cambridge, 1973), pp9-11. Most commentators' concerns centre on the relationship between utility as a standard for moral action and some of Mill's other ideals, for example, liberty. Until recently an exception to this general interpretative rule was John Robson's view. Robson construes Mill's utilitarianism as a 'relativistic' standard of human improvement centred on individual self-development. Robson's interpretation stands out for its stress on the character of Mill's utilitarianism as a general ethic. John Robson, *The Improvement of Mankind: The Social and Political Thought of John Stuart Mill* (The University of Toronto Press, Toronto, 1968), pp117-59. In recent years similar interpretations of Mill's utilitarianism have appeared, for example, Wendy Donner, 'Mill's utilitarianism', in John Skorupski (ed), *The Cambridge Companion to Mill*, (Cambridge University Press, Cambridge, 1998). Donner argues that 'Mill jettisons the

Benthamite felicific calculus; he offers in its place a method employing the preferences of self-developed agents.' - p273. Roger Crisp in his *Mill on Utilitarianism*, (Routledge, London, 1997) also offers a utilitarian interpretation of Mill based on self-development. He describes it as 'utilitarian generalization' and, although similar in structure to rule utilitarianism, such a system 'requires that we perform no action which is such that, if people were generally to perform it, welfare would not be maximized.' - p116.

⁵ Mill's approach was that if people were allowed freedom they would eventually develop themselves. Later liberals such as Hobhouse and Green were prepared to adopt more coercive measures. Contemporary perfectionist liberals such as Joseph Raz argue that perfectionist goals can be promoted without resorting to coercion, however, I shall argue in a later chapter that Raz's argument is also ultimately unconvincing. See Raz, *The Morality of Freedom*.

⁶ Robert Nozick, *Anarchy, State and Utopia* (Blackwell, Oxford, 1974) p33 (italics in original).

⁷ William Galston, 'Value Pluralism and Political Liberalism', *Report from the Institute for Philosophy and Public Policy*, Volume 16, No. 2, Spring 1996

⁸ Robert Nozick, *Anarchy State and Utopia*, pp272-3.

⁹ Joseph Raz, *The Morality of Freedom*, p111.

¹⁰ *ibid.* pp110-1.

¹¹ John Stuart Mill, *On Liberty* p68.

¹² *ibid.* pp152-3.

¹³ *ibid.* p153.

¹⁴ *ibid.* p158.

¹⁵ *ibid.* pp154-5.

¹⁶ *ibid.* p67.

¹⁷ Mill notes in *On Liberty* 'Where not the person's own character but the traditions or customs of other people are the rule of conduct, there is wanting one of the principal ingredients of human happiness, and quite the chief ingredient of individual and social progress'. - p120.

¹⁸ See for example, Mill *On Liberty*, p123.

¹⁹ *ibid.* p141.

²⁰ *ibid.* p144.

²¹ *ibid.* p142.

²² *ibid.* pp157-8.

²³ *ibid.* p158.

²⁴ *ibid.* p158.

²⁵ John Stuart Mill, *Utilitarianism*, in *Utilitarianism, On Liberty and Considerations on Representative Government*, p55.

²⁶ *ibid.* p62.

²⁷ *ibid.* emphasis added.

²⁸ *ibid.*

²⁹ *ibid.* p67.

³⁰ *ibid.* p69 emphasis added.

³¹ John Stuart Mill, *Utilitarianism*, p12.

³² *ibid.* p39.

³³ Raz, *The Morality of Freedom*, p110

³⁴ John Stuart Mill, *On Liberty*, p68.

³⁵ *ibid.* p69.

³⁶ H.J. McCloskey, *John Stuart Mill: A Critical Study* (Macmillan, London, 1971), pp104-5.

³⁷ R.B. Friedman, 'A New Exploration of Mill's Essay On Liberty', *Political Studies*, Vol. 14, 1966, pp281-304, p289.

³⁸ Isaiah Berlin, 'John Stuart Mill and the Ends of Life', in *Four Essays on Liberty* (Oxford University Press, Oxford, 1969) p190.

³⁹ Isaiah Berlin, 'Two Concepts of Liberty', in *Four Essays on Liberty*, pp135-40.

⁴⁰ Isaiah Berlin, 'John Stuart Mill and the Ends of Life', in *Four Essays on Liberty*, p178.

⁴¹ John Stuart Mill, 'M. de Tocqueville on Democracy in America', in G.L. Williams (ed) *John Stuart Mill on Politics and Society* (Fontana, Glasgow, 1976), p215.

⁴² John Stuart Mill, *On Liberty*, p68, emphasis added.

⁴³ *ibid.* p69.

⁴⁴ *ibid.* p122.

⁴⁵ It should be noted, however, that Mill does not place the exercise of autonomous choice in a moral vacuum, but rather squarely within the core of his moral theory, especially relating to the development of character. And as Helen Morales, states in *Perfect Equality: John Stuart Mill on Well-constituted Communities* (Rowman and Littlefield, London, 1996): '[C]hoice from character is choice that unmistakably reveals the deliberation, reasoning, observation, judgement, feeling and decision of a moral agent. From Mill's perspective, if people are denied the conditions necessary for self-development and are taught to accept that the goodness of certain ways of life lies in its conformity to *a priori* notions of wisdom, propriety or rightness, they will not be in a position to make free choices. - p107.

⁴⁶ John Stuart Mill, *On Liberty*, p123.

⁴⁷ *ibid.* p123.

⁴⁸ *ibid.*

⁴⁹ John Stuart Mill, 'M. de Tocqueville on Democracy in America', in G.L. Williams (ed) *John Stuart Mill on Politics and Society*, pp218-9.

⁵⁰ *ibid.* p219.

⁵¹ *ibid.* p220.

⁵² Helen Morales in *Perfect Equality: John Stuart Mill on Well-constituted Communities* clearly outlines the basis of Mill's argument:

[H]e [Mill] argued that human beings have higher faculties that require fostering: the intellect, the feelings, the imagination and the moral sentiments. These faculties are sources of pleasures different from sensual pleasures. More importantly, the pleasures that people derive from the development and exercise of the higher faculties have a 'higher value' as pleasures than do sensual pleasure. Mill contended that after experiencing a range of alternatives, people would prefer a 'manner of existence' that includes the development and exercise of their higher faculties over one that does not. - p83.

Helen Morales, *Perfect Equality: John Stuart Mill on Well-constituted Communities* (Rowman and Littlefield, London, 1996).

⁵³ John Stuart Mill, *On Liberty* p125-6.

⁵⁴ John Stuart Mill, *Utilitarianism*, p9.

⁵⁵ *ibid.* p8.

⁵⁶ *ibid.* p11.

⁵⁷ *ibid.* pp8-9.

⁵⁸ *ibid.* p10.

⁵⁹ Matthew Arnold, *Culture and Anarchy and other Writings* (Cambridge University Press, Cambridge, 1993); Samuel Smiles, *Character* (London, 1871); John Morley, *On Compromise* (London, 1886).

⁶⁰ John Stuart Mill, Bentham, in *Essays on Ethics, Religion and Society*, (ed) J.M. Robson, *Collected Works*, vol. 10. (Toronto University press, Toronto, 1969), p95.

⁶¹ John Stuart Mill, *A System of Logic* Eighth Edition (London, 1900).

⁶² *ibid.* p616.

⁶³ *ibid.* p617.

⁶⁴ John Stuart Mill, *On Liberty* p127.

⁶⁵ John Stuart Mill, *Utilitarianism*, p4.

⁶⁶ *ibid.* p36.

⁶⁷ Mary Warnock in her introduction to *Utilitarianism, On Liberty and Essay on Bentham* argues that Mill's position is not necessarily circular. See, John Stuart Mill, *Utilitarianism, On Liberty and Essay on Bentham*, edited and introduced by Mary Warnock, (Fontana, London, 1962), pp26-7.

⁶⁸ John Stuart Mill, *A System of Logic*, p621.

⁶⁹ *ibid.*

⁷⁰ *ibid.*

⁷¹ *ibid.* p621-2.

⁷² There is a parallel here with the interpretation of Mill's utilitarianism offered by Wendy Donner in 'Mill's utilitarianism', in John Skorupski (ed), *The Cambridge Companion to Mill*. She suggests that in Mill's view 'there is a strong and central role for secondary moral principles; but there are also instances where a direct appeal is made to the principle of utility in particular cases'. - p279.

⁷³ John Stuart Mill, *On Liberty*, p141.

⁷⁴ *ibid.* p144.

⁷⁵ *ibid.*

⁷⁶ *ibid.* p173.

⁷⁷ See, Alasdair MacIntyre, *Whose Justice? Which Rationality?* (University of Notre Dame Press, Notre Dame, Indiana), p335.

⁷⁸ John Stuart Mill, *Essays on Bentham and Coleridge*, in G. Himmelfarb (ed) *Essays on Politics and Culture* (Anchor, New York, 1963).

⁷⁹ *Essay on Bentham*, *ibid.* p 92.

⁸⁰ *ibid.* p102.

⁸¹ *Essay on Coleridge*, *ibid.* pp 141-2.

⁸² Edmund Burke, *Reflections on the Revolution in France*, p 135.

⁸³ *Essay on Coleridge*, *ibid.* pp 137-8.

⁸⁴ *ibid.*

⁸⁵ *ibid.* p 139.

⁸⁶ Burke, *Reflections on the Revolution in France*, p120.

⁸⁷ Michael Oakeshott, *Rationalism in Politics*, p168.

⁸⁸ *ibid.* p 189

⁸⁹ John Stuart Mill, 'Speech on Perfectibility,' reprinted in *John Stuart Mill's Autobiography*, Harold Laski (ed) (World's Classics, London, 1958)

⁹⁰ *ibid.* p293.

⁹¹ *ibid.* pp 297-8

⁹² Michael Oakeshott, *Rationalism in Politics*, p189.

⁹³ Despite Mill's alleged elitism, C.L. Ten in *Mill on Liberty*, for example argues that the ideal of individuality is within the reach of all. However, Ten nonetheless recognises that Mill holds that there should be a special role for the élite as '[H]e [Mill] believes that only a few men are capable of initiating new practices. The rest are, however, capable of

realising their individualities too because they can choose for themselves among a range of alternatives which they have not initiated.' - p71.

⁹⁴ See Oakeshott, 'The Masses in Representative Democracy', in A. H. H. (ed) *Freedom and Serfdom: An Anthology of Western Thought*.

Chapter 3

Raz, Contextualism and Conservatism

Raz is an explicitly perfectionist liberal: he argues that it is legitimate for the state to seek to promote the well-being of its citizens in a way that involves it in the business of judging the value of particular ways of life. For Raz 'it is the goal of all political action to enable individuals to pursue valid conceptions of the good and discourage evil or empty ones'.¹ What, allegedly, allows Raz's perfectionism to remain a liberal conception is his claim that, at least in contemporary western societies, a good life must be an autonomous life: a person's well-being depends on their being the author of their own life and on the availability to them of a multiplicity of valuable options. What Raz has attempted to do is to sever the link between liberalism and its traditional anti-perfectionism or neutrality (which has existed since Locke) whilst nonetheless maintaining liberalism's no less traditional core values of autonomy and moral pluralism. As I noted in chapter 1, the notion of liberal value neutrality can be interpreted in a number of different ways.² It can refer to neutrality of justification - that political and social actions and procedures should not be justified or undertaken on the grounds that they promote some particular conception of the good; or to neutrality of effect - that they should not have the effect of promoting one conception of the good over another. The neutrality that liberals customarily defend is neutrality of justification. Raz specifically rejects such a conception under the pressure of his perfectionism which is expressed in his desire for individuals to choose between good options, rather than between good and identifiably bad options.

At the heart of Raz's theory is a conception of autonomy which may initially suggest,

however, that he should rather be advocating the kind of neutral attitude towards the state favoured by Rawls. After all, how can the decisions that individuals make about how they should live be genuinely autonomous if the state is using its (coercive) power to back up its own judgements of the relative merits of the choices individuals might make? Raz believes this misunderstands both the nature of autonomy and its value: ‘... the autonomy principle is a perfectionist principle... The autonomy principle permits and even requires governments to create morally valuable opportunities, and to eliminate repugnant ones’.³

Such an understanding of autonomy and its implications for the legitimate role of the liberal state requires Raz to offer a substantive account of what constitutes a valuable life and what constitutes a repugnant one. He has to argue *both* for the value of the individual’s freedom to make their own choices, *and* also that the choice that the individual makes has to be one that is – independently of the individual’s subjective view of it - a valuable one because ‘[A]utonomous life is valuable only if it is spent in the pursuit of acceptable and valuable projects and relationships’.⁴ In effect Raz is attempting to offer in the political sphere the same form of synthesis that O’Neill offers in moral philosophy in *Towards Justice and Virtue*. Both attempt to develop limited prescriptions based on practical reasoning in the context of existing societies.

In Chapter 1 I outlined O’Neill’s position with respect to what she takes to be the current crisis in western philosophy.⁵ To reiterate, she suggested that the loss of metaphysical and religious foundations has led to a split in ethical theory expressed by the current dichotomy between predominantly universalist conceptions of justice and predominantly particularist conceptions of ethics. O’Neill argues that the divergence between justice and virtue in contemporary philosophy - and hence the current crisis in western moral philosophy - occurred because they drifted apart in their attempts to cope with the loss of metaphysical,

i.e. religious, foundations by unsuccessful resort to a naturalism, whose content was in fact derived from religion. When the religious sources of the science of man can no longer be convincingly invoked, what started as objective goods are transformed into subjective goods. In parallel fashion Raz's perfectionism is an attempt to restore some measure of objectivity - based on the moral value of autonomy - countering what he describes as anti-perfectionist liberalism which, he argues, rests upon the intuitive idea that

since morality is an expression of one's rational nature, it is essentially self-determined. Given the social determination of the concept of a person and the absence of unanimity in the outcome of moral deliberation, the only proper course seems to be to endorse constitutional arrangements neutral between competing conceptions of the good in order to enable all individuals to develop and pursue their own conception of the good. Since no conception of the good which expresses the rational nature of the person upholding it is better than any other, the constitutional arrangements should be neutral between them. ... this intuitive idea relies on a plausible looking but unfounded belief in the acceptance of a need for unanimously approved principles of justice as in everyone's highest interest. This is enough to reject it.⁶

Raz then goes on to say he that he rejects this neutralism in favour of perfectionist moral pluralism, a pluralism in which: 'many forms of the good ... are admitted to be so many valuable expressions of people's nature, but pluralism which allows that certain conceptions of the good are worthless and demeaning, and that political action may and should be taken to eradicate or at least curtail them'.⁷ Autonomy is for Raz a means to an end, and not, as on the traditional liberal account, an end in itself. Far from liberalism's commitment to autonomy requiring that the state remain neutral between individuals' conceptions of the good, it is to promote just those conceptions of the good which are valuable (and which autonomy serves).

What I intend to do in the rest of this chapter is show that whilst Raz's perfectionism attempts to provide a substantive notion of the good it in fact turns out to offer a conservative form of argument in defence of a set of ideals that are local to the areas which gave liberalism birth. However, the way Raz uses a conservative form of argument is slightly

different from the one that, as I have argued, Mill, Hayek and, indeed, a communitarian like Rorty employ *malgré eux*. While they have used conservative forms of argument to replace universalist justifications of liberalism, Raz does something different. Earlier I noted that he has to offer a substantive account of what constitutes a valuable life and what constitutes a repugnant one; and it is in justifying the content, rather than the scope, of his perfectionism that Raz adopts a conservative form of argument. In order to demonstrate how this works I shall first examine how his perfectionism is a product of its social, intellectual and political context. In the final section of this chapter I shall show how that constitutes conservative form of argument.

I - Raz's Contextual Perfectionism

Raz's perfectionism suggests that he would be the least likely of the liberals examined in this thesis to offer a conservative form of argument: after all his perfectionist claims that some things are objectively good and that it is the role of state and society to engage in policies which promote the good and discourage the bad are the opposite of what a conservative would say. But to leave it at that is misleading. Raz, as I have said, sees the good as fundamentally concerned with autonomy but rejects the idea that this requires governments to refrain from promoting a vision of the good life. Instead, he argues that a flourishing society, in which people can pursue the variety of good options, on which his version of autonomy depends, requires the maintenance of a certain kind of community: and it is the maintenance of that which is the central task of liberal government. For Raz, a 'good life' is one that allows and promotes 'value pluralism' so that citizens have sufficient options to choose from in creating their own lives:

Belief in value pluralism is the view that many different activities and forms of life which are incompatible are valuable. Two values are incompatible if they cannot be realized or pursued to the fullest extent in a single life. In this sense value pluralism is a mundane phenomenon. One cannot be both a sprinter and a long-distance runner,

both valuable activities, for they require the development of different physical abilities, and also tend to suit different psychological types. Philosophers do not make good generals and generals do not make good philosophers. One cannot pursue both the contemplative and the active life, and so on and so forth.⁸

Raz's emphasis on autonomy is just as clear. In *Ethics in the Public Domain*, for instance, he writes:

Liberalism is more than just a political morality. It arises out of a view of the good of people, a view which emphasizes the value of freedom to individual well-being. Liberalism upholds the value for people of being in charge of their life, charting its course by their own successive choices. Much liberal thought has been dedicated to exploring the ways in which restrictions on individual choices, be they legal or social can be removed, and obstacles to choice - due to poverty, lack of education, or other limitations on access to goods - overcome.⁹

Value pluralism is fundamental for Raz because he rejects what he describes as 'a still pervasive belief in the reducibility of all values to one which serves as a common denominator to the multiplicity of valuable ways of life'.¹⁰ According to him, this occurs in contemporary society through the development of a subjectivism that reduces all values to the common denominator of being happy or getting what we want. For Raz,

[V]alue pluralism is the doctrine that denies such a doctrine is possible. It takes a plurality of valuable activities and ways of life to be ultimate and ineliminable. This radically changes our understanding of pluralism. On a reductive-monistic view, when one trades the pleasures (and anxieties) of family life for a career as a sailor one is getting, or hoping to get, the same thing one is giving up, be it happiness, pleasure, desire-satisfaction or something else. So long as one plans correctly and succeeds in carrying out one's plans there is no loss of any kind. One gives up the lesser pleasure one would derive from family life for the greater pleasure of life at sea. If value pluralism is correct, this view is totally wrong. What one loses is of a different kind from what one gains. Even in success there is a loss, and quite commonly there is no meaning to the judgement that one gains more than one loses. When one was faced with valuable options and successfully chose one of them, then one simply chose one way of life rather than another, both being good and not susceptible to comparison of degree.¹¹

Raz believes that, since in contemporary societies there are many of these competing choices available to individuals, there cannot but arise tensions between them – both in the case of individuals who are not sure that they have made the right choices for them, and between

groups of individuals who are convinced that their set of choices or chosen lifestyle are superior to others:

Conflict is endemic. Of course pluralists can step back from their personal commitments and appreciate in the abstract the value of other ways of life and their attendant virtues. But this acknowledgement coexists with, and cannot replace, the feelings of rejection and dismissiveness towards what one knows is in itself valuable. Tension is an inevitable concomitant of accepting the truth of value pluralism.¹²

If Raz's description of the nature of value pluralism is accurate, then it is not surprising of course that he adopts the fundamental liberal value of autonomy to deal with it. For seeking to be the author of one's own life and attempting to achieve one's own satisfactions can be the only satisfactory reason for being compelled to choose between - for example - the life of a scholar or the life of an athlete. However - as in the case of Mill - Raz is not concerned just with the choices we make, but with the basis upon which they are made:

[T]o a considerable degree the claim that freedom is action in accordance with reason is no more than a consequence of the fact that freedom pre-supposes the availability of options to choose from, and that options - all except the very elementary ones - have an internal structure, an inner logic, and we exercise our freedom only if we comply with their inner reason.¹³

For Raz, then, autonomy is exercised in choosing between a plurality of genuine goods; goods which can be only established by reason; and autonomy is a necessary ingredient of the good forms of life accessible to those agents who live in cultural and historical eras such as our own - eras that are highly mobile and discursive, which demand skills in deliberative reasoning and reflective choice making, that may undergo rapid change, and so on. The value of autonomy is contextual: it is an ingredient in the forms of human flourishing that are feasible in certain definite historical cultural contexts such as our own. It is not autonomous choice, still less choice itself, that is valuable but instead the life that is autonomously chosen. The autonomous choice of a worthless life, if there can be such a choice, is valueless even though it is autonomous. Raz's view of the relations of autonomous choice with the good life seems in fact to be considerably Aristotelian, in that autonomous

choice, though it enters into many forms of human flourishing and excellence as a necessary ingredient, has value only when it is a component of a form of life or activity that has itself intrinsic value: its value is instrumental rather than intrinsic. In effect, the value of autonomy depends on circumstance. Now compare this with what Burke, for instance, says of freedom (rather than autonomy):

Abstractedly speaking, government, as well as liberty, is good: yet could I, in common sense, ten years ago have felicitated France on her enjoyment of a government ... without enquiry into what the nature of that government was, or how it was administered? Can I now congratulate the same nation upon its freedom? Is it because liberty in the abstract may be classed amongst the blessings of mankind that I am seriously to felicitate a madman who has escaped from the protecting restraint and wholesome darkness of his cell, on his restoration to the enjoyment of life and liberty? Am I to congratulate an highwayman and murderer, who has broke prison, upon the recovery of his natural rights? This would be to act over again the scene of the criminals condemned to the galleys, and their heroic deliverer, the metaphysic Knight of the Sorrowful Countenance.¹⁴

Burke is the exemplar of conservatism. He believes that what is good or bad, or whether change is desirable or not depends on the context of events. Change, for example, is not bad *per se* but it is bad if it is not in tune with the traditions manners and *mores* of a particular society. Burke argues that what is or is not valuable depends on local circumstances and local conditions, which is precisely the point Raz insists upon. Autonomy is a good which governments have a duty to promote only in the kinds of contemporary societies where life without autonomy is substantively less valuable than an autonomous existence. For Raz autonomy, in such societies, is not simply one value among many rather 'the conditions of autonomy concern a central aspect of the whole system of values of a society, which affects its general character. The conditions of autonomy do not add an independent element to the social forms of a society.'¹⁵ Raz's perfectionism is a local one. Nonetheless, he wishes to maintain Mill's and other early liberals' attachment to the idea of freedom as moral freedom guided by reason. Where then does this leave the comparison with Burke I made earlier? Raz's version of perfectionism is local but maximal; he wishes to pursue the intimations in

contemporary society which will allow all citizens to enjoy the advantages of autonomy because any citizen, in such a society, who is not autonomous has a less valuable life than those who are autonomous. By contrast Burkean conservatism might be said to adopt a perfectionism that is local but minimal; it recognises that existing societies can be defended on the basis that they promote liberty, but such conservatism deplores too rapid or extensive change in case the limited but still valuable good of freedom be lost. In effect, Raz is using a Burkean form of argument to defend the liberal content of his argument.

The liberal content of Raz's argument emerges in the argument he uses to maintain the idea of autonomy as moral freedom guided by reason. To do this Raz very carefully distinguishes between self-interest and well-being.

... a person's self interest, to the extent that it is served by what he cares about is served by the success in those of his pursuits and relationships which he does not enter into to improve the well-being of others. This explanation is a negative one. It works by exclusion. Self-interest is what remains after subtracting from the wider notion of well-being success in those projects whose value (in the eye of the person in question) is their contribution to the well-being of others.¹⁶

Well-being consists not only in pursuing our own self-interest (in certain circumstances) but also in pursuing goals which are to the benefit of the wider community. Well-being, unlike self-interest, cannot be divorced from the context of the community in which an individual lives. This works in two ways: first, the individual cannot flourish in isolation from the rest of the community; and second, the values of the community will help define self-interest. Well-being, therefore, is the total of what might be described as self-regarding and other-regarding goals. In other words, it depends not only on the goals we set for ourselves, but on the goals we would wish to see attained by our community. Thus Raz argues that some goals are more valuable than others on the basis that, although a person may believe a particular goal to be in their own best interests, it may nevertheless not in fact contribute to their well-being. For a person's well-being depends on reasons independent of their belief about it.

Raz further differentiates between self-interest and well-being by comparing the well-being of a livestock farmer and a gambler:

A person who spends all his time gambling has, other things being equal, less successful a life, even if he is a successful gambler, than a live stock farmer busily minding his farm. Their self-interest may be equally served by their activities, but their well-being is not. The reason is that they engage in what they do because they believe it to be a valuable worthwhile activity (perhaps but not necessarily because of its value to others). They care about what they do on that basis. To the extent that their valuation is misguided it affects the success of their life.¹⁷

For Raz, then, a person's well-being does not depend on them living a life that they believe to be of value, but upon living a life that is valuable for reasons independent of their belief in its value: 'a person's well-being depends on the value of his or her goals and pursuits',¹⁸ as Raz has it, and not on their belief in the value of those goals and pursuits. It is entirely possible for a person's belief about the worth of their conception of the good to be mistaken, and, if it is, we do not respect them or promote their well-being by ignoring the fact. The fundamental point here is the reason-dependent character of goals. People pursue goals for reasons, namely that they are valuable. If they are mistaken, they are not living successful lives: the '[S]atisfaction of goals based on false reasons does not contribute to one's well-being'.¹⁹ And once we admit that some ideals are valid and some are not, that there are (good) reasons for pursuing some ideals and none (or lesser ones) for pursuing others - acknowledging that a person derives no well-being from a life spent in pursuit of the latter, then, according to Raz, we have no reason to respect a person's mistaken belief that the invalid ideal they hold is in fact a valid one.

The problem of course is that the reasons why an ideal is valid or invalid are themselves context dependent. The reason why autonomy is valuable in contemporary liberal democracies is that societies are highly mobile and discursive and to flourish in such societies requires the skills of deliberative reasoning and reflective choice making. Not all

societies fit this model and it is in Raz's recognition of this fact that one can discern his use of a conservative form of argument. It is to an examination of that argument I now turn.

II - Raz and Conservatism

In order to make my case that Raz employs a conservative form of argument to justify the content of his perfectionism, it is important first to explore the reasons for his claim that '[A] person's well-being depends to a large extent on success in socially defined and determined pursuits and activities.'²⁰ This recognition of the social construction of individual well-being is the foundation of his localism. It has two components: first, that individual well-being depends upon success in achieving individual comprehensive goals; and second, comprehensive goals are based on social forms of behaviour.

Comprehensive goals are, for Raz, the goals that people have, the ramifications of which pervade important dimensions of their lives, provide the structure in which lesser goals are nested and give their life its overall shape and orientation. If he is right to think that a person's well-being consists in the successful pursuit of their goals, then success in achieving them will be the source of their well-being. Now, Raz's conception of well-being occupies a middle ground between two diametrically opposed views: one which holds that a person's life can go well even if they are not content in their situation, even if they do not willingly accept the goals set for them; and another which holds that something is valuable for a person only if it seems so to them. Raz argues that whilst the wishes of individuals play a part in their well-being they do not exhaust it. For instance, someone may be a very talented history teacher, but very discontented with their lot, preferring to immerse themselves entirely in the English Civil War re-enactments of the Sealed Knot. They may be successful in that world, they may even be more content than when they were a talented

teacher, but, Raz would argue, their well-being was substantially less because their comprehensive goals are not based on the social forms of behaviour widely practised in their society. This localism emerges, for instance, in the claim that; 'a person can have a comprehensive goal only if it is based on existing social forms, i.e. on forms of behaviour which are in fact widely practised in his society'.²¹ He presents two kinds of reason in support of it. First, there is the point that the significance of individual behaviour depends on the existence of social forms. While this is most obvious in the case of activities which directly involve social institutions – 'one cannot pursue a legal career except in a society governed by law, one cannot practise medicine except in a society where such a practice is recognised...' –²² – the idea that what actions mean depends necessarily on the social and cultural practices and conventions that surround them embraces also less thoroughly institutionalised areas. Although any sighted person in the vicinity of a bird can watch it that does not make the individual in question a bird watcher. To be that, they must be in a society that recognises bird-watching as a leisure activity, and which has certain attitudes to wild life. What it means to be a bird-watcher depends on the inevitably social environment of significance that surrounds the activity of watching birds. And comprehensive goals, those that pervade important decisions of an individual's life, are no less inevitably going to be bound up with social forms in this way.

Not only do the activities of individuals derive their meaning from society, but also - and this is Raz's second point - individuals can acquire and maintain goals only through continuous familiarity with social forms. According to him, people do not learn how to be parents, or friends through processes of explicit instruction; indeed, the conventions governing appropriate behaviour in specific friendship contexts, for example, are too dense to be codified. Micro-sociologists, for example, claim that the development of a relationship between two people depends on the significance of thousands of bits of 'body language'.

And as Raz says,

All these are derived from the common culture, from the shared social forms, and though they receive the individual stamp of each person their foundation in shared social forms is continuing and lasting. Just as the eye continues to guide the hand all the way to its target, and is not limited to determining its original trajectory, so our continued awareness of the common culture continuously nourishes and directs our behaviour in pursuit of our goals.²³

Although people's comprehensive goals are necessarily derived from social forms this does not mean, in Raz's view, that there is no room for deviation from, or even transcendence of existing conventions. He claims that his thesis that comprehensive goals are inevitably based on socially existing forms is consistent with experimentation and with variations on a common theme, and sometimes these may be so extensive as to constitute real innovation:

It is not that a person cannot, through the development of his own variations and combinations, transcend the social form. People can, and sometimes do, do this, but inevitably in such cases the distance they have travelled away from the shared forms is, in these cases, the most significant aspect of their situation. It more than anything else then determines the significance of their situation and its possibilities for those people.²⁴

Deviations from social forms themselves always derive their meaning from the matrix of meanings in which they are embedded, a matrix that is itself necessarily social. Although the individual is not bound by existing practices, and although an individual can live a valuable life by transcending existing conventions, they nevertheless cannot escape the significance of social conventions.

Since, as Raz argues, autonomy requires the availability of a variety of valuable options, and since valuable options depend largely on social forms, it follows that autonomy requires the existence of a variety of social forms. It then follows that

autonomy is only possible if various collective goods are available. The opportunity to form a family of one kind or another, to forge friendships, to pursue many of the skills professions and occupations, to enjoy fiction, poetry, and the arts, to engage in many of the common leisure activities: these and others require an appropriate common culture to make them possible and valuable.²⁵

The general thrust of Raz's argument is unequivocal. Since 'the provision of many collective goods is constitutive of the very possibility of autonomy',²⁶ he rejects the individualism of classical liberalism. Instead, he adopts a contextual and localist definition of such liberal staples as the right to autonomy:

A right to autonomy can be had only if the interests of the right-holder justifies holding members of the society at large to be duty-bound to him to provide him with the social environment necessary to give him a chance to have an autonomous life. Assuming that the interests of one person cannot justify holding so many to be subject to potentially burdensome duties ... it follows that there is no right to personal autonomy.²⁷

For Raz, collective goods are constitutive of the very possibility of autonomy, yet no individual can have a right to collective goods because that would imply implausibly onerous duties. It follows that no individual can have the right to autonomy. Autonomy, for Raz, is a means to an end, rather than an end in itself, but it is a means to personal well-being founded on the context of existing societies.

Rather than being tied to the traditionally individualistic picture of the relation between individual and society, rights should be conceived and defended in terms of their contribution to the public culture. Raz argues

that the liberal tradition is not unequivocally individualistic, and that some of the typically liberal rights depend for their value on the existence of a certain public culture, which their protection serves to defend and promote... [T]heir role is not in articulating fundamental moral or political principles, not in the protection of individualistic personal interests of absolute weight. It is to maintain and protect the fundamental moral and political culture of a community through specific institutional arrangements or political conventions.²⁸

Now, although Raz insists that his argument for the content of personal well-being depends on social forms this is

not a conventionalist thesis. It does not claim that whatever is practised with social approval is for that reason valuable. It says that the comprehensive goals a person finds valuable are based on social forms, whether or not these are socially approved social forms. In other words the thesis merely sets a limit to what comprehensive forms can

be valuable for any person. They can be valuable only if they can be his goals and they can be his goals only if they are founded in social forms.²⁹

Now, this argument is of a clearly conservative form, that the value of typically liberal rights is culture dependent. It is again apposite to offer a quotation from Edmund Burke, in his discussion of the *Petition of Right*, he says:

In the famous law of 3d of Charles I, called the *Petition of Right*, the parliament says to the king, 'your subjects have *inherited* this freedom,' claiming their franchises not on abstract principles 'as the rights of men' but as the rights of Englishmen, and as a patrimony derived from their forefathers. Selden, and the other profoundly learned men, who drew this petition of right, were as well acquainted, at least, with all the general theories concerning the 'rights of men' as any of the discourses in our pulpits ... But for reasons worthy of that practical wisdom which superseded their theoretic science, they preferred this positive, recorded, *hereditary* title to all which can be dear to the man and the citizen, to that vague speculative right, which exposed their sure inheritance to be scrambled for and torn to pieces by every wild litigious spirit.³⁰

This statement by Burke is the definitive claim that the rights and liberties of Englishmen were dependent on concrete social forms rather than on abstract *a priori* claims of natural right. On that point Raz would not disagree, but he would be concerned that such claims rested on only approved social forms rather than on social forms that may exist under disapproval and on sufferance. This, for Raz, could well reduce valid and valuable choices for individuals. However, this assumes that conservatism is based on no more than a blind resistance to perceived change whereas this is not the case. All conservative theorists have to incorporate change into their political theory. In the famous words of Burke:

A state without the means of some change is without the means of its conservation. Without such means it might even risk the loss of that part of the constitution it wished most religiously to preserve.³¹

However, what is perhaps more relevant is Oakeshott's description of political activity:

Politics is the activity of attending to the general arrangements of a collection of people who, in respect of their common recognition of a manner of attending to its arrangements, compose a single community. To suppose a collection of people without recognized traditions of behaviour, or one which enjoyed arrangements which intimated no direction for change and needed no attention, is to suppose a people incapable of politics. This activity, then, springs neither from instant desires, nor from

general principles, but from the existing traditions of behaviour themselves. And the form it takes, because it can take no other, is the amendment of existing arrangements by exploring and pursuing what is intimated in them.³²

Raz may claim that his argument is not conventionalist because he rejects the idea that everything practised with social approval is necessarily valuable; but by the same token conservatives such as Oakeshott and Burke recognise no less, that societies change and develop. They can and indeed do readily agree with Raz's assessment, namely that his '... thesis merely sets a limit to what comprehensive forms can be valuable for any person. They can be valuable only if they can be his goals and they can be his goals only if they are founded in social forms.'³³

Let us pause briefly to consider Oakeshott's view in a little more detail. He identifies political activity as 'the amendment of existing arrangements by exploring and pursuing what is intimated in them',³⁴ amendments that may even be radical for their time and initiated by even a traditional culture:

the legal status of women in our society was for a long time ... in comparative confusion, because the rights and duties which composed it intimated rights and duties which were nevertheless not recognized. And, on the view of things I am suggesting, the only cogent reason for the technical 'enfranchisement' of women was that in all or most other important respects they had already been enfranchised. Arguments drawn from abstract natural right, from 'justice', or some general concept of feminine personality, must be regarded as either irrelevant, or as unfortunately disguised forms of the one valid argument; namely, that there was an incoherence in the arrangements of the society which pressed convincingly for remedy.³⁵

The enfranchisement of women was a radical step when it was proposed but it had to be intimated in the existing traditional culture or it would not have been considered, never mind become a *cause celebre*. This must be what Raz means when he says (despite claiming that his argument is not conventionalist because it does not state that whatever is practised with social approval is for that reason valuable) 'that the comprehensive goals a person finds valuable are based on social forms, whether or not these are socially approved social

forms'.³⁶ The enfranchisement of women was for a very long time looked upon with grave social disapproval, even by large numbers of women. Nonetheless, according to Oakeshott, the imperative for the enfranchisement of women was immanent within the political culture of western liberal democracies such as Britain because it was intimated in the arrangements of that society, despite widespread social disapproval. On this evidence Raz would have no quarrel with such a conservative view of the argument in favour of remedying such an incoherence in social arrangements.

That this indeed would be Raz's position can be demonstrated by exploring further his views on autonomy. I have already noted that Raz insists that there is no automatic right to autonomy, but rather that any such right exists only if the interests of the right-holder justifies holding members of society at large to be duty-bound to provide them with the social environment necessary for an autonomous life. Assuming that the interests of one person cannot justify holding so many to be subject to potentially burdensome duties, it follows that there is no right to personal autonomy.³⁷ Raz argues that what matters is the existence of a public culture and that the value of liberal rights is that they 'maintain and protect the fundamental moral and political culture of a community through specific institutional arrangements or political conventions'.³⁸

This comparison shows that there are two areas where Raz and Oakeshott use the same form of argument. They both deny the validity of rights-based arguments to defend personal autonomy or choice; and they both identify liberty as being best defended by a public culture. This latter point is crucial to the case that I am making about Raz. At the beginning of this chapter I argued that Raz's use of a conservative form of argument was different from Mill's and Hayek's. I suggested that this was because, as a perfectionist, Raz had to defend a substantive conception of the good life - and it is in developing such a conception that Raz

employs a conservative form of argument. Let us return to Oakeshott to show how.

Oakeshott encapsulates his point of view on the relationship between autonomy and society in a passage in *On Human Conduct* which is worth quoting at some length as it illuminates so clearly his position:

What is called 'moral autonomy' does not require moral choice to be a gratuitous, criterionless exercise of a so-called 'will' ... in which a lonely agent simultaneously recognizes or even creates a 'value' for which he is wholly responsible and places himself under its command, thus miraculously releasing himself from organic impulse, rational contingency, and authoritative rules of conduct. Nor is it conditional upon an agent's critical consent or approval of a rule of conduct in terms of a recognition of purported reasons for considering it to be desirable. Nor again does it require some other release from having to recognize a rule of conduct merely in terms of its being a rule; that is in terms of its authority. Indeed, strictly speaking, there is no such experience as a 'moral choice'. What is chosen in conduct is substantive action or utterance in which an agent embarks upon the adventure of seeking an imagined and wished-for satisfaction in the response of another. And his 'moral autonomy' lies first in his character as an agent (that is, in his action or utterance being a response to an understood want and not the consequence of an organic impulse), and secondly, in his action or utterance as self-disclosure and self-enactment in a contingent subscription of his own to the conditions of a practice (which cannot tell him what to do or to say) recognized in terms of its authority. Human conduct is not first having unconditional wants (individual or communal) and then allowing prudential reason and moral sensibility to indicate or to determine the choice of the actions in which their satisfaction is sought; it is wanting intelligently (that is, in recognition of prudential and moral considerations) and doing this successfully or not successfully.³⁹

The practice to which Oakeshott is referring is the practice of civility which occurs in 'a civil state' where people are united by common moral rules rather than by common sentiments. These moral rules are, according to Oakeshott, derived from a concrete tradition of behaviour already extant in such a society. Moral rules are abridgements of concrete moral practices which 'concentrate into specific precepts considerations of adverbial desirability which lie dispersed in a moral language.'⁴⁰ General moral considerations or 'intimations' are transformed into relatively precise prescriptions. But these more stringent considerations are not self-contained or self-sufficient: they are abstractions which cannot survive apart from the tradition of morality from which they were derived. Moral rules and

duties 'give only an abbreviated account of the conditions containing the continuous flow of diurnally enacted genial relationships, which constitute unaffected moral association; no moral practice can be reduced to the rules, the duties or the 'ideals' it obtrudes, and *rightness* is never more than an aspect of moral response'.⁴¹ Further, Oakeshott argues, rules and duties, though relatively specific, remain unavoidably indeterminate. They do not specify choices or performances but only considerations to be taken into account when acting: '[T]hey are not commands to be obeyed but relatively precise considerations to be subscribed to. They are used in conduct, not applied in conduct.'⁴² In short, Oakeshott maintains that rules alone are never enough to determine concrete activity; they 'are not criteria of good conduct ... they are prevailing winds which agents should take account of in sailing their different courses'.⁴³

What Oakeshott does is to offer a conservative defence of freedom based on established moral practices in existing societies. He discusses how moral practices and the rules derived from them apply to human behaviour largely in terms of what he describes as 'self-disclosure', that is to say individuals disclosing themselves in actions aimed at procuring satisfactions composed primarily of the responses of other agents. And there is a further aspect of human behaviour which Oakeshott emphasises within this context. This aspect of human conduct concerns not the intention of an action - that is, its imagined or wished for outcome - but the motive or sentiment with which an action is performed. In acting, an agent not only chooses an action aimed at some specific satisfaction, but also chooses a sentiment or motive with which to perform that action (e.g., fear, benevolence, pity, compassion, envy). Neither consideration is directly related to or deducible from the other. A person may kill, for example, out of a variety of motives such as love, hatred, compassion and so forth; or they might perform the duties of an office out of pride or fear. Actions do not specify motives, and motives do not specify actions.⁴⁴

To this second aspect of human conduct – relating to the sentiments or motives with which actions are performed – Oakeshott gives the name ‘self-enactment’:

In regard to conduct in respect of the sentiments or motives in which actions are chosen and preformed, a morality specifies conditions of worthy self-enactment. The compunctions it enjoins are not concerned with recognizing agency in others but with an agent’s exercise of agency in respect of himself. And they are genuine compunctions. The fashionable so-called ‘morality of conscience’ in which good conduct is identified with the contingent self approval of the agent is no less preposterous in relation to self-enactment in motive than it is in respect of self-disclosure in action.⁴⁵

Hence, a moral practice – such as civility – is just as concerned with self-enactment as with self-disclosure. A moral practice specifies the conditions not only of moral self-disclosure, but also of worthy or ‘virtuous self-enactment’.⁴⁶ Oakeshott rejects the idea that there is anything merely ‘private’ or ‘subjective’ in motives⁴⁷; they, no less than, actions are governed by the compunctions of a common language and practice. Nevertheless, he does admit that the conditions of virtuous self-enactment ‘are apt to be less emphatic than those of moral self-disclosure’;⁴⁸ and that we tend to judge others less strictly or exactly with respect to the former rather than the latter. But he insists that this greater tolerance does not stem from indifference to one another’s exploits in self-enactment; rather it stems from a ‘recognition that in ordinary intercourse a man’s choices of what to do and the compunctions they exhibit matter more than the sentiment in which he makes them’.⁴⁹

What this concern with individual self-disclosure and self-enactment testifies to is freedom, which, for Oakeshott, is a postulate of agency simply as such, because all conduct – even a slave’s – is an ‘intelligent’ response to circumstance.⁵⁰ Freedom is not an unconstrained will, because circumstances are constraints and conduct cannot appear independently of them. Nor is freedom, at least at this elementary level, identical with the self-direction or autonomy which civil association fosters. Autonomy, however, does develop out of the freedom inherent in agency.

The conversion of this type of unsought freedom into autonomy or self-direction is not spontaneous. It is a process which has to be learned so that it becomes a satisfaction in its own right; and it is this form of autonomy which is a virtue – virtuous self-enactment:

This disposition or quality of character is not to be understood as a surrender to so-called 'subjective will', or as a relapse into the effortless indulgence of inclination, or as the canonization of 'conscience'; it is a difficult achievement. The self here is a substantive personality, the outcome of an education, whose resources are collected in a self-understanding; and conduct is recognized as the adventure in which this cultivated self deploys its resources, discloses and enacts itself in response to its contingent situations and both acquires and confirms its autonomy. Nor does the experience of this disposition imply the worship of nonconformity, a devotion to arbitrary so-called 'self-expression', or a resolution to be different at all costs. The conduct it prompts is not composed of unconditional choices, and it does not require indifference to moral or prudential practices or aversion from any but self-made rules. It is composed of actions and utterances which reflect the contingent sentiments, affections, and beliefs this particular self has made its own. The autonomy of such a self and the independence or originality of such conduct lies not at all in an unconcern for the conditions which specify the arts of agency. Nor, again, does this disposition forbid association in a co-operative undertaking to pursue a common purpose; what it requires is that such association shall be in terms of continuous choices to be associated which reflect the self-understanding of the persons concerned. In short, what is postulated and emphasized here is a collected personality, autonomous on account of its self-understanding and its command of resources it has made its own. And the half of this self-understanding is knowing its own limits.⁵¹

This Oakeshottian version of autonomy is both the condition and product of civil association. It presupposes a graceful acceptance of obligations and it consists in endeavouring to meet them in the most creative and appropriate way. Unlike the allegedly 'natural' freedom endorsed by most thinkers in the liberal tradition (including Locke and Rawls and even in some respects Mill), it can be learnt only in society. Moreover, this type of freedom can flourish only under its complement law. Oakeshott's conception of freedom is not so much that of a right as an individual and collective accomplishment. To reiterate, the moral character involved, Oakeshott says is 'autonomous on account of its own self-understanding and its command of the resources it has made its own.' And as he concludes 'the half of this self-understanding is knowing its own limits'⁵².

To sum up this brief survey of Oakeshott's view of autonomy; it is predicated upon the rules and practices which emerge from a common culture. Furthermore, it is possible, although Oakeshott would believe it to be usually unwise to transcend the limits laid down by the common culture on one's autonomy. But even if those limits are transcended that transcendence is itself a product of the common culture.

Now, let us return to Raz. I have already shown that Raz's conception of autonomy requires the maintenance of a certain kind of community and that that maintenance is the central task of liberal government. Now, Raz claims that autonomy is a condition of achieving (in liberal democratic societies at least) anything that might be rationally regarded as a good. Thus, Raz argues, it is the task of government to promote autonomy in societies such as our own where, without autonomy, people cannot flourish. In effect, Raz is offering an argument for autonomy on the basis that it is a necessary condition for living a good life where that – the content of a good life – is determined by the specific features of a local state of affairs, namely contemporary western liberal democracy. And that is a form of argument which is fundamentally conservative because he is not advocating radical change to existing societies; rather he is suggesting changes intimated within their existing arrangements to ensure more successful human flourishing. Moreover, human flourishing for Raz means precisely the good life as defined by the traditions and cultures of western liberal democracies. Again a comparison with Oakeshott is apposite. In one of his most famous descriptions of political activity he states:

In political activity, then, men sail a boundless and bottomless sea; there is neither harbour for shelter nor floor for anchorage, neither starting-place nor appointed destination. The enterprise is to keep afloat on an even keel; the sea is both friend and enemy; and the seamanship consists in using the resources of a traditional manner of behaviour in order to make a friend of every hostile occasion.⁵³

Now, this seems to be, indeed is, a long way from the perfectionist ideals of Raz. But

Oakeshott goes on to qualify what he says in order to offer what he takes to be an acceptable conservatism:

A depressing doctrine, it will be said - even by those who do not make the mistake of adding in an element of crude determinism which, in fact, it has no place for. A tradition of behaviour is not a groove within which we are destined to grind out our helpless and unsatisfying lives: ... But in the main the depression springs from the exclusion of hopes that were false and the discovery that guides, reputed to be of superhuman wisdom and skill, are, in fact, of a somewhat different character. If the doctrine deprives us of a model made in heaven to which we should approximate our behaviour, at least it does not lead us into a morass where every choice is equally good or equally to be deplored.⁵⁴

Oakeshott's conception of the nature of any justifiable political activity remains localist. However, this conception is still mirrored by Raz's perfectionism that declares autonomy serves the good society. Both he and Oakeshott recognise that a tradition of behaviour cannot be fixed and that choices are not good or bad *qua* choice, but rather on account of their content – a content moreover, the evaluation of which cannot but be constrained by the accepted norms of the particular society in which it is made. For Raz, even choices which transcend existing norms are products of social forms and provided they promote autonomy are valuable choices. This is not, of course, what Oakeshott would say. Nonetheless, the manner in which even that sort of transcendental choice is constrained by social forms remains the same for both Raz and Oakeshott. Moreover, Raz's view parallels that of Oakeshott in that it rejects any subjectivism that reduces all values to a common denominator such as being happy or getting what we want. Raz's doctrine of value pluralism declares that different substantive choices lead to different types of satisfactions and if one makes one valuable choice ahead of another, then it is often the case that these two choices are inimical and making one choice rather than another leads to loss.⁵⁵ But this is something Oakeshott would accept and welcome; it is on just those grounds that he advocates a conservative position with regard to how political choices – and actions – may be justified. For instance, when speaking of the motivation for action, he insists that

an action is a chosen response to an understood contingent situation and is related to an imagined and wished-for outcome; that is the spring of conduct in a situation in respect of it being recognized to contain a specific unacceptability. From this ... it follows that it cannot be understood as a means to the achievement of an end not implicit in itself. But it follows, also, that there can be no independent scale which converts these specific disliked situations, or these specific sought-for satisfactions, into commensurable fractions of a single general condition (e.g. amounts of 'pain' or 'pleasure') and in terms of which all situations may be measured, or at least compared, in respect of their unacceptability and all actions in respect of their sought-for or actual yield of satisfaction. Or, in other words, the spring of action cannot be understood as a situation unacceptable in virtue of lacking an acceptable degree of such measurable and homogeneous satisfaction, and what is wished for and sought cannot be understood as an outcome imagined in terms of its having an acceptable degree of such measurable satisfaction. I cannot *want* 'happiness'; what I want is to be idle in Avignon or to hear Caruso sing.⁵⁶

Equally, Oakeshott notes in *Rationalism in Politics* that

Changes are without effect only on upon those who notice nothing, who are ignorant of what they possess and apathetic to their circumstances; they can be welcomed indiscriminately only by those who esteem nothing, whose attachments are fleeting and who are strangers to love and affection. ...the inclination to enjoy what is present and available is the opposite of apathy and breeds attachment and affection. Consequently it [a conservative disposition] is averse from change, which appears always in the first place as deprivation. A storm which sweeps away a copse and transforms a favourite view, the death of friends, the sleep of friendship, the desuetude of customs of behaviour, the retirement of a favourite clown, involuntary exile, reversals of fortune, the loss of abilities enjoyed and their replacement by others – these are changes none perhaps without its compensations, that the man of conservative temperament regrets. But he has difficulty in reconciling himself to them, not because what he has lost in them was intrinsically better than any alternative might have been or was incapable of improvement, nor because what takes its place is inherently incapable of being enjoyed, but because what he has lost was something he actually enjoyed and had learned how to enjoy and what takes its place is something to which he has acquired no attachment.⁵⁷

This is the difficulty that Raz identifies with value pluralism. When choices are made between competing goods there is often loss when one choice excludes the other. For instance, someone who has been a devout Roman Catholic may have become disillusioned by some of the Church's teaching with respect to abortion or homosexuality. For moral reasons they have made a choice no longer to attend Mass. Instead they decide to perform voluntary work amongst the homeless on Sundays. The person in question has made a valid moral choice and has replaced their activity with something that is morally good and of

great service to the community. Nonetheless, it is easy to see that that person could well suffer a profound sense of loss engendered by their decision to no longer attend Mass. Now, when applied to politics this becomes a very conservative doctrine because it recognises - notwithstanding any visible moral and pragmatic benefits of reform - that during any process of change established valuable institutions, insights and knowledge may well be lost whilst any benefits, however great, are inevitably uncertain. This is precisely the point of Oakeshott's conservatism.

III - Conclusion

In order to demonstrate how Raz's epistemological conservatism develops into political conservatism we must again turn to Onora O'Neill. What O'Neill attempts to do in *Towards Justice and Virtue* is to provide theoretical support for a cosmopolitan scheme of values and concerns, on the basis of practical reason and without resort to subjective naturalism, in the same way that Raz attempts to defend his perfectionist model of political philosophy. She claims her work is constructive both in the sense of being directed towards questions of policy and legislation, and also in that it relies solely on principles that can be established on the basis of reflection about the presuppositions of agency and the general nature of human agents. At the heart of the argument however is the attempt to identify practical rationality with 'reliance on principles which (it is judged) can be principles for all, where the scope of 'all' is taken to vary with context.'⁵⁸ O'Neill, like Raz attempts to mediate between universalists and particularists by showing that these two concepts should not be seen as dictating rival approaches to the whole of ethics or politics but rather as complementary elements of the same localist morality. And it is this localist morality which gives rise to epistemological conservatism

This is demonstrated by the comparison between Raz and Oakeshott noted above. Moreover, the conservative form of justificatory argument adopted by Raz leads inevitably to a substantive political conservatism. Society's epistemic norms govern knowledge, as Rorty, for example, has argued,⁵⁹ thus the norms of a society must found the basis of what is or is not good. If that is the case the good life cannot but be justified by contemporary social values. Autonomy then becomes the means to an end of a good life only in those societies which are highly mobile and have a discursive culture; thus autonomy is the necessary condition for a good life only within contemporary liberal democratic societies.

What Raz has done is develop a perfectionist model of liberalism based on an idealised version of existing society: just as a conservative such as Oakeshott offers a prescription for human flourishing based on the norms and practices of an existing society, so Raz offers (limited) prescriptions for human flourishing that are developed from an existing public culture. The emphasis on autonomy which makes his position a liberal one turns out to be dependent on its being a means to ends given by the norms and practices of particular societies. Thus the primary goal of government, on his perfectionist model, is to maintain the public culture on the basis of which autonomy allows individuals to pursue good lives. But that is just what the conservative says. Of course Raz insists that his is not a conventionalist – and thus conservative – argument because it allows individuals to transcend the social forms that exist in that public culture. But we have already seen that as all conservatisms have a theory of change, Raz's insistence that his argument is not conventionalist is unconvincing. Furthermore, no sceptical conservative of any description would deny an individual's opportunity to develop alternatives from existing social forms: however, like Raz, they recognise that those opportunities are themselves products of the same public culture which Raz sees it as the duty of liberal government to protect. The need to protect the public culture from civil strife leads directly to Raz's epistemological

conservatism evolving into an overt sceptical pragmatic conservatism. For example:

The pursuit of full-blooded perfectionist policies, even of those which are entirely sound and justified, is likely in many countries if not in all, to backfire by arousing popular resistance leading to civil strife. In such circumstances compromise is the order of the day. There is no abstract doctrine which can delineate what the terms of the compromise should be. All one can say is that it will confine perfectionist measures to matters which command a large measure of social consensus, and it will further restrict the use of coercive and of greatly confining measure and will favour gentler measures favouring one trend or another.⁶⁰

A reminder of Oakeshott's position is germane at this point. It will be recalled that Oakeshott argued that political activity is derived from concrete traditions of behaviour extant in societies. Political behaviour pursues intimations which are inherent in the traditions of behaviour which gave them birth. This is precisely what Raz is advocating in the quotation given above. His version of political activity is based on localist pragmatism and compromise. Lest there be any mistake that this is indeed what Raz intends, consider the final paragraph of the *Morality of Freedom*:

Freedom based on fear of civil strife, like freedom based on the unreliability of governments, depends on some doctrine of 'ideal' freedom. It presupposes an ideal doctrine of freedom, for it tells us when and how to compromise, just as the unreliability of government is measured by its inability to achieve targets set by the doctrine of the 'ideal'. Furthermore these doctrines of freedom by necessity and compromise bring us the freedom of imperfection, the liberty from governmental action which all too often is an admission that perfect freedom is unobtainable.⁶¹

This seems perilously close to an admission that politics must be imperfect and, therefore, only limited political activity which seeks to remedy gross and obvious abuses which are obviously out of tune with existing political traditions is acceptable to even a perfectionist liberal. Raz, therefore, is more far more conservative than an obviously perfectionist liberal like Mill. Raz sees autonomy as a means to an end only in the type of social context, such as western liberal democracies, where people require autonomy if they are to have a good life. By contrast Mill insists that autonomy is valuable irrespective of the social context, and whether it leads to a good life or not. In effect Raz's thought is closer to the anti-essentialist

liberalism of Rorty than to the perfectionist universalism of Mill.

Rorty argues that the communitarian conception of the situated self is better suited to liberal democracy than the Enlightenment notion of a transcendental self.⁶² This is because, instead of having individuals who are detached from society, we have people who are socialised into being liberal democrats. In this case, the danger of fanaticism over ultimate values is much reduced as people take a pragmatic approach to politics, by not forcing onto others their value judgements concerning the good life. As Rorty puts it, given our history we put 'liberty ahead of perfection'.⁶³ The fact that this removes passion from the public sphere is accepted by Rorty as he recognises that this is a price worth paying for political freedom; 'even if the typical character types of liberal democracy *are* bland, calculating, petty, and unheroic, the prevalence of such people may be a reasonable price to pay for political freedom'.⁶⁴ Rorty thus argues that both deontological and communitarian liberalism must be rejected in order to embrace a pragmatic acceptance of liberalism as a system which works for us by protecting our freedom.

Given what Raz says at the end of *The Morality of Freedom* and which I discussed above it is apparent his perfectionism adopts just the same type of pragmatic, limited liberalism as does Rorty. Raz's perfectionism is dependent on defending things as they are here and now within western liberal democracies. And that is a substantively conservative position.

¹ Joseph Raz, *The Morality of Freedom* (Clarendon Press, Oxford, 1986)p133.

² See for example Joseph Raz, *The Morality of Freedom*, Chapter 5.

³ *ibid.* p417.

⁴ *ibid.*

⁵ Onora O'Neill, *Towards Justice and Virtue* (Cambridge University Press, Cambridge, 1996).

⁶ Joseph Raz, *The Morality of Freedom*, p132.

⁷ *ibid.* p133.

⁸ Joseph Raz, *Ethics in the Public Domain* (Oxford University Press, Oxford, 1994) p179.

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- ⁹ *ibid.* p175.
¹⁰ *ibid.*
¹¹ *ibid.*
¹² *ibid.* p180.
¹³ *ibid.* p176.
¹⁴ Burke, *Reflections on the Revolution in France*, p90.
¹⁵ Joseph Raz, *The Morality of Freedom*, p394.
¹⁶ *ibid.* p297.
¹⁷ *ibid.* p298-9.
¹⁸ *ibid.*
¹⁹ *ibid.* p 301.
²⁰ *ibid.* p301.
²¹ *ibid.* p308.
²² *ibid.* p310
²³ *ibid.* p312
²⁴ *ibid.* p312-3.
²⁵ *ibid.* p247.
²⁶ *ibid.* p207.
²⁷ *ibid.* p247.
²⁸ *ibid.* p245
²⁹ *ibid.* p310.
³⁰ Burke, *Reflections on the Revolution in France*, p118.
³¹ *ibid.* p106
³² Michael Oakeshott, *Rationalism in Politics* (Methuen, London, 1962)p123-4 emphasis added.
³³ Joseph Raz, *The Morality of Freedom*, p310.
³⁴ Michael Oakeshott, *Rationalism in Politics* p123-4.
³⁵ *ibid.* p124.
³⁶ Joseph Raz, *The Morality of Freedom*, p310.
³⁷ Raz, *Morality of Freedom*, p247.
³⁸ *ibid.*
³⁹ Michael Oakeshott, *On Human Conduct*, p79-80.
⁴⁰ *ibid.* p66.
⁴¹ *ibid.* p68
⁴² *ibid.*
⁴³ *ibid.* p70.
⁴⁴ *ibid.* p71-3.
⁴⁵ *ibid.* p 74-5
⁴⁶ *ibid.*
⁴⁷ *ibid.*
⁴⁸ *ibid.* p76-7
⁴⁹ *ibid.* p74-5
⁵⁰ *ibid.* p36-7
⁵¹ *ibid.* p236-7.
⁵² *ibid.*
⁵³ Michael Oakeshott, *Rationalism in Politics*, p127.
⁵⁴ *ibid.*
⁵⁵ Joseph Raz, *The Morality of Freedom*, p175.
⁵⁶ Michael Oakeshott, *On Human Conduct*, p53.
⁵⁷ Michael Oakeshott, *Rationalism in Politics*, p170.
⁵⁸ Onora O'Neill, *Towards Justice and Virtue*, p52..
⁵⁹ See, for example, Rorty, *Philosophy and the Mirror of Nature* (Princeton University Press, Princeton, New Jersey, 1980) especially Chapters 3 & 6 and Rorty, *Contingency, Irony and Solidarity* Chapter 3.
⁶⁰ Joseph Raz, *The Morality of Freedom*, p429.
⁶¹ *ibid.*
⁶² Richard Rorty, *Objectivity, Relativism and Truth* (Cambridge University Press, Cambridge, 1991)p186-7.
⁶³ *ibid.* p186.
⁶⁴ *ibid.* p190.

Chapter 4

Hayek's Libertarian Neutrality

Mill straddled the divide between the classical and the new liberalism. While he unquestionably valued the liberal principles of 17th and 18th century liberal thinkers, he attempted to provide a normative basis for freedom and the rule of law by arguing that proto-liberal values were a necessary, if not sufficient, condition for the voluntaristic development of the ultimate goal of liberalism, the evolution of rational choosing individuals. Hayek, by contrast, claims that his work is an attempt to restate and refine the arguments of the early thinkers of classical liberalism: David Hume, Adam Smith, James Madison, Immanuel Kant and Alexis de Tocqueville.¹ He believes that precisely the developmental element that emerged in liberalism thanks to Mill's emphasis on the evolution of character fundamentally undermined the elements in liberalism that had led to what he described as the 'Great Society'. Hayek attempts to prove two things. First, that the liberal order is 'natural', in the sense that it is unplanned, the product of human actions but not of human design; and second, on the basis of his epistemology and empirical psychology, that the liberal order is the best form of society if human beings are to have satisfying lives. Indeed, Hayek would go further and argue that the only meaningful forms of good life are to be found in liberal societies, where individuals can pursue their own purposes, and not have the purposes of others imposed upon them. Ironically, despite these claims, Hayek is rigorous in his disavowal of any conception of the good. His putative neutrality rests on his claim that the case for liberty rests on value-free empirical foundations, in contrast to Mill, who, as we have seen, argued that the establishment of ultimate moral ends could not be a scientific enterprise.²

In this chapter, I shall argue that Hayek's conception of a 'spontaneous order' is not, however, neutral in the sense of being value-free. Furthermore, I shall argue, his epistemology and empirical psychology cannot bear the weight of proof that his theory requires. Hayek's *oeuvre* ranges over several traditional academic disciplines and he participated in some of the key intellectual debates of the 20th century; this chapter therefore cannot claim to be a comprehensive account even of his work on liberalism. What it is concerned to do, however, is to demonstrate that underpinning his allegedly value-free conceptions of the human mind and the spontaneous order is a tacit conception of the good, and that for all his claims to be scientific and value-free, Hayek's thought ultimately rests on a subjective adherence to the liberal tradition. Only those elements of Hayek's thought directly relevant to achieving this objective will be examined in detail.

Hayek, of course has often been interpreted as a conservative.³ However, what appears not to have been noticed is the contradictory nature of his empirical and Kantian arguments and the role of that tension in his (conservative) thinking. Moreover, an examination of these tensions demonstrate that Hayek, far from being an aberrant liberal as is usually claimed, is in fact clearly representative of the liberal tradition. Hayek's normative prescriptions depend, either in part or in full, on empirical psychological and epistemological foundations. Whereas Mill believes that tradition and conformity are threats to individuality, Hayek argues that they are -as a matter of fact - its foundation. How does Hayek reach these conclusions? Hayek's thought is both explanatory and prescriptive: he explains the nature of man and society and on the basis of those explanations develops a prescriptive theory which allows him to defend liberty as the foremost value in society.

Hayek's objectives were always clear. His aim, set out in a series of works beginning with *The Road to Serfdom* in 1944 and culminating with the publication of the first volume of his

collected works, *The Fatal Conceit: The Errors of Socialism*,⁴ in 1988, has been to demonstrate that socialism in all its forms is untenable, and that the good society must be one governed by liberal institutions upholding the market economy and the rule of law.

Indeed as one recent author has commented, Hayek had two intellectual personas:

[H]e was a patient, thorough, wide-ranging scholar, who emerged as one of the most important and original thinkers of the century, but also as one of the century's most renowned ideologues, a leading critic of all forms of socialism and a passionate advocate of classical liberalism.

... Hayek's reputation as an ideologue has for long been a barrier to a wider appreciation of his intellectual contribution to social science. This is hardly surprising. The two are hard to disentangle, because Hayek for the most part saw no reason to keep them apart. His ideological views flow from the same methodological assumptions as his scientific work and his writings are all part of the same intellectual project.⁵

The unacknowledged dichotomy between Hayek the ideologue and Hayek the scholar is what is centrally problematic about his thought. Although Hayek's theory seeks to offer both normative and allegedly empirical scientific justifications⁶ for making liberty the foremost value in society, neither is ultimately successful - or so I shall seek to show. Hayek attempts to do two things. First, he tries to show, through his epistemology and psychology, that a free society offers the best opportunity for progress, prosperity and the fulfilment of the diverse and proliferous wants of individuals. This is an empirical claim about the value of liberty and it offers a reason, other than suggesting that liberty is an end in itself, why liberty is valuable. Second, he attempts to offer a normative defence of liberty that does in fact claim that liberty is of value as an end in itself, rather than in terms of the effect that it might have on the material well-being of individuals. I shall argue that his attempt fails in two ways.

First, he does not succeed in demonstrating that his model of society as a rule-governed, purposeless, spontaneous order - the product of human action but not of human design - is in fact neutral. This was what I described in chapter 1 as neutrality of justification, in the sense

of being free from value-laden notions of the good society. While the putative neutrality of Hayek's work rests on the idea that, as 'spontaneous order' describes how things *are*, the rules which emerge unintentionally to regulate them do not have a normative element and hence are neutral between the premeditated competing conceptions of the good of individuals, the very fact that he argues that intervention in certain types of order can create or improve the qualities of those orders in such a way that their efficiency - in meeting the diverse and proliferous wants of individuals - is improved suggests that, underlying the notion of 'spontaneous order', is some form of instrumental good. That instrumental good, however, assumes an object and that is material well-being, that is to say a substantive good. Second, Hayek offers no consistent moral defence of the maintenance of what he describes as a free society. His justification for his political programme of maintaining and promoting liberty through the free market is that it is such a system that allows the survival, in relative material prosperity, of a greater number of people than would otherwise be the case - again what we have is an assumed substantive conception of the good. The survival in relative material prosperity of a greater rather than a smaller number of people is neither self-evidently nor necessarily a good, difficult though that thought might be: consider, for example, the ascetics of various religious and philosophical traditions. Hayek uses three types of argument to defend freedom. The first, implied by the contention that a free society with a free market allows a greater number of people a better quality of material life, is consequentialist. The second, which is related to the first, offers what is in fact a conservative defence of the established order, based on a psychology and epistemology which tells him that as there is no archimedean point whence societies can stand back and objectively reform themselves by reason, they are more likely to retain their freedom, and hence their material prosperity, by adhering to established traditions and institutions. Both these arguments are teleological, a justification of the morality of the liberal order on the basis of the ultimate well-being of individuals. The third argument is a Kantian one, based

on the idea that liberty is a worthwhile end in itself. Difficulties, however, arise from the combination of these arguments: for they are clearly inconsistent with each other. On the one hand, attempting to maintain and secure a system - based on what Michael Oakeshott described as the 'plausible ethics of productivity'⁷ - is not neutral between competing conceptions of the good; and on the other, if liberalism fails to deliver the prosperity promised, then it cannot be empirically justified on that basis. Nor can Hayek then fall back on his Kantian defence of freedom, because its rationalist basis contradicts his (earlier) empirical psychology and epistemology. It might be supposed, however, that I have misconstrued the problem for the tension I have described is evident only if Hayek's two lines of argument are understood as either/or possibilities; but, as Hayek after all insists, the claim that liberalism is the most effective way of satisfying human wants is not a moral claim; and thus the notion that freedom is valuable in itself could be seen as an additional reason for adopting liberalism. To put it more formally,⁸ there is no actual inconsistency between (a) the notion that liberalism is the most effective way of satisfying the aggregate of human wants, as a reason for espousing it; and (b) that freedom is valuable in itself, as an additional reason for espousing it. We only get into meta-ethical problems if we claim (a) is a moral claim - i.e. if (a) - that liberalism is the most effective way of satisfying the aggregate of human wants - is a *moral* reason for espousing it. And this is precisely what Hayek wants to avoid claiming as (a) is meant to be value neutral. But this objection assumes that (a) *can* be regarded as other than a moral claim, as Hayek indeed intends. It is only if we assume a liberal view - and indeed Hayek's version of it - that (a) could be seen as not a moral claim. On a liberal view the claim that 'liberalism is the most effective way of satisfying the aggregate of human wants' can be other than a moral claim because 'most effective' is understood as either an empirical or value-free claim, or at any rate as one which does not rest on any substantive 'good'. But that is precisely the point at issue. What is simply 'most effective' for Hayek might well be morally outrageous for, for instance, a stoic

or a pre-medieval Christian. Moreover, the very possibility of regarding the claim as value neutral, is already to subscribe, at least to the viability of liberalism's alleged neutrality concerning the good as itself a good.

To reiterate, the problem Hayek faces is that he is attempting to run an empirical and an ethical argument simultaneously. The empirical claim is founded on empirical psychological and epistemological evidence about the nature of society which he claims demonstrates that the most effective order for satisfying human wants is a liberal order; and moreover, because these claims explain how the world actually is, they are value-free and neutral, consequently, if liberalism fails to deliver prosperity the justification fails. By contrast, Hayek's normative argument claims that liberty is of value in itself, whether or not it promotes human material good. The empirical argument, however, cannot do the work demanded of it because the evidence does not support it; while the normative argument - being normative - requires a justification of the relevant values which Hayek does not provide. Thus Hayek's attempt to provide a foundation for the vision of a society founded on individual liberty fails: but, I shall argue, such a vision might more plausibly be defended on a conservative understanding of the empirical evidence.

I - 'Spontaneous order' and the value of liberty

Hayek, then, sees his work as an attempt to restate and refine the ideas of classical liberalism. Although he is not a natural rights theorist, he would accept Locke's contention that the reason why individuals associate with others in society is the '*Preservation* of their lives liberties and estates'.⁹ What Hayek attempts to do is to show that states which confine themselves to such roles not only preserve liberty by limiting coercion to ensure that people obey the law, but that such states are not *coercive* at all. To overcome this apparent

contradiction Hayek argues that, provided the rules established to protect liberty are general and can be applied universally, the state which administers them is both neutral between competing conceptions of the good and does not itself have a substantive purpose. Where does this leave the idea that the purpose of entering political society and placing oneself under government is the 'preservation of lives liberties and estates'? His answer is that no one, or no institution seeks security of person or property as an end in itself. Security of person or property is always a good that is needed in order to achieve other substantive goods.

Hayek suggests that only those forms of association governed by internally abstract universal rules can achieve the security of lives, liberties and estates.¹⁰ The maintenance of these rules is not what a theorist like Michael Oakeshott - who bears certain similarities to Hayek in this respect - would describe as a 'substantive' independent purpose, but is rather a precondition which allows citizens to pursue their own ends. The addition of the adjective 'substantive' is important here. Substantive means subsisting separately and independently apart from the individual ends of the citizens of a state.¹¹ Thus on Hayek's preferred model, the state must not have a separate independent purpose from the individual purposes of the citizens who live under its jurisdiction if it is to maintain the liberty of its citizens. The state is a compulsory institution in that no one has a choice whether or not to be a member: if it has a specific purpose of its own, beyond allowing individuals to pursue their own purposes, then it imposes on its citizens its own particular goals and so destroys the liberty it was established to protect. The nature of this type of purposive state can be made more explicit by comparing it with an organisation. Organisations such as sports clubs, community associations or charities unite their members in the pursuit of a common goal: if they did not share that goal, they would not be members of the organisation. The rules of the organisation exist to facilitate members in the pursuit of this common end. By contrast, in

Hayek's terms, the rules of a state exist to prevent individuals and organisations clashing in the pursuit of their own self-set goals.

The arena in which individuals pursue these self-set goals is civil society. Civil society is a complex association of individuals joined together with one another in a series of relationships shaped by personal interest, economic inter-dependence, conventions and laws. Included within civil society are associations of individuals linked in pursuit of common goals through commerce, charitable institutions or community groups; or in enjoyment of common pastimes such as sport or art; or as communicants of various religions. Specifically excluded from civil society are political relations and the institutions of the state. But the state is, nevertheless, responsible for the maintenance of civil society through enforcing sets of general universal rules. These rules, however, are not coercive, inasmuch as they do not restrict individual purposes; they merely state universal conditions that must be taken into account when acting. One way of understanding how Hayek's ideal non-purposive rules would work is to compare them to the laws in existing states that regulate traffic. Such laws do not specify the destination of any journey that is undertaken; rather they specify the conditions which must be taken into account if the traveller is going to reach his or her destination safely and without risking the lives of other travellers. Similarly, Hayek's universal rules do not impose the purposes of the state upon us. As they are general, they provide the necessary conditions under which we may pursue our own purposes without arbitrary restriction by others or by the state. They work in the same way as the rules of the road, in that they will allow us to pursue our own goals without risk of harm or improper hindrance from others.

If states do not possess such a character, then, to a greater or lesser extent, they coerce their citizens. Although Hayek declares that liberty is the foremost value in society, a significant

element in the case he makes for liberty surrounds the damage done by coercion. Indeed, Hayek begins his fullest account of individual liberty by saying: '[T]he state in which a man is not subject to coercion by the arbitrary will of another or others is often distinguished as 'individual' or 'personal' freedom, and whenever we want to remind the reader that it is in this sense that we are using the word 'freedom' we shall employ that expression.'¹²

At this point, Hayek cites F.H. Knight to the effect that 'coercion' is the term that really needs to be defined,¹³ and in the definition cited above he has specified the coercion he has in mind, namely the 'coercion by the arbitrary will of another or others'. The rule of law, according to Hayek, is not arbitrary, but general and universal; and is therefore not a restriction on individual liberty - for Hayek, the rule of law is not coercive. It has been argued by some that Hayek's insistence on universality as a basis for law will not protect individual spheres of liberty, and overlooks some forms of coercion.¹⁴ However, Hayek's position is that the rule of law is not coercive, and that furthermore it is only the version of the rule of law that Hayek espouses which will allow society to flourish.

In order to make his case that his conception of the rule of law is non-coercive, Hayek makes a distinction between spontaneous order and organisation.¹⁵ Hayek claims that laws are neutral and non-coercive because they are products of orders in society that he declares to be 'spontaneous': that is, the product of human action but not of human design. The conception of the 'spontaneous order' is at the heart of Hayek's social theory and is the foundation of his neutralist claims. For Hayek, 'the formation of spontaneous orders is the result of their elements following certain rules in their responses to their immediate environment'.¹⁶ Furthermore, '[T]he individual responses to particular circumstances will result in an overall order only if the individuals obey such rules as will produce an order. Even a very limited similarity in their behaviour may be sufficient if the rules, which they all obey, are such as to

produce an order.'¹⁷ Hayek developed his idea of a 'spontaneous social order', '[T]o explain how an overall order of economic activity was achieved which utilised a large amount of knowledge which was not concentrated in any one mind but existed only as the separate knowledge of thousands or millions of different individuals.'¹⁸ This point was to show how a market society could function without the co-ordination of a central authority: and his answer is that '[A]n adequate insight into the relations between the abstract rules which the individual follows in his actions, and the abstract overall order which is formed as a result of his responding, within the limits imposed upon him by those abstract rules, to the concrete particular circumstances which he encounters.'¹⁹

From this passage it seems that the mechanism on which 'spontaneous order' rests has two components. 'Spontaneous order' first arises out of the routine observance of general rules of behaviour; and second, from the modifications which individuals make in response to local conditions. The orders established by such rule-governed behaviour can be distinguished from the type of order formed by organisations.

The distinction between 'spontaneous order' and organisation is foundational for Hayek's social theory. According to Hayek, however, it is a distinction which goes against the widely held belief that society, and the social orders which comprise it, are all constructed by conscious human design. People have 'anthropomorphic habits of thought',²⁰ and this inclines them to think that all social orders are deliberately created by human beings in order to serve substantive human purposes, that they are all organisational in character. However, to regard all social formations in this way, as social corporations based upon hierarchical relations of a command and obedience, is a mistake. Of course, many social institutions are 'organisations' - e.g. companies, clubs, charities even families²¹ - but they are integrated into an all-encompassing social order that is not itself hierarchically structured

and must not be mistaken for an organisation. This 'overall order'²² of society is the most extensive spontaneous order that Hayek identifies in social life, but it is not the only one. Other examples of spontaneous social orders are '[m]orals, religion and law, language and writing, money and the market',²³ and the thing that all of these orders have in common is an intersubjective process of mutual discovery through exchange.²⁴ The crucial difference between spontaneous order and organisation is that spontaneous orders, because they are the products of human action but not of human design, do not have purposes: therefore they cannot coerce their members - unlike organisations, which operate by command in order to achieve collective goals.

Five elements distinguish spontaneous orders from organisations. The first distinction is one of origin. The origin of spontaneous orders is not intentional, unlike that of organisations, as we have seen spontaneous order is the 'result of human action but not of human design'.²⁵ It is the product of self co-ordination among its members, each seeking their own objectives but not making any deliberate efforts to establish an order. By contrast, co-ordination in organisations is the product of central direction in order to achieve collective goals: hence, unless unanimity can be reached on the nature of these, individuals who dispute the validity of, or who oppose, collective goals must be coerced. The second distinction lies in the nature of the co-ordinating medium. The co-ordination between individuals that exists in spontaneous orders is a product of rules: individuals co-ordinate their activities by accepting rules that specify conditions to be taken into account when acting. The order that emerges is the result of both the regular observation of these *rules of conduct* by individuals; and of individuals adjusting to the specific circumstances in which they find themselves whilst following the *rules of conduct*. To clarify this point, it is important to understand that one reason why Hayek values spontaneous orders is that their regularity allows us to co-ordinate our actions with the actions of others without the necessity of coercion. We can do that only

if we can predict the actions of others within certain given parameters. The *rules of conduct* provide these parameters, and as a result the responses of individuals to their environment will not be random but will be, to a certain extent, predictable. That is why, for Hayek, spontaneous orders are indeed *orders* and not a series of disconnected responses to isolated singular events. In an organisation, by contrast, co-ordination is achieved either by commands from those in charge, for example, a committee, a manager, or a commander; or by the will of a majority of organisation members; these commands coerce those who are not voluntarily part of the organisation. The third element of difference between spontaneous orders and organisations surrounds the nature of purposes that they allow individuals to pursue. A spontaneous order facilitates the pursuit of many individual purposes: 'not having been made it *cannot* legitimately be said to *have a particular purpose*, although our awareness of its existence may be extremely important for our successful pursuit of a great variety of different purposes'.²⁶ This is clearly distinct from the purposive nature of an organisation established to serve a specific objective defined in advance, and this distinction determines the nature of the co-ordinating devices on which spontaneous orders and organisations rely. The rules of conduct, which are the co-ordinating medium for spontaneous orders, are 'negative', merely framing a sphere of allowed individual activity, but leaving members free to choose their ends according to their own plans.²⁷ The commands that ensure co-ordination in an organisation, on the other hand, determine members' activities in order to further the organisation's established collective goal as effectively as possible, whether or not these conflict with the goals of individuals. The fourth difference is their level of complexity. Hayek believes that there are no inherent limits to the complexity which spontaneous orders can acquire. By contrast, organisations are 'confined to such moderate degrees of complexity as the maker can still survey'.²⁸ Finally, only spontaneous orders raise genuine explanatory problems and thus require explanatory social theory: their intricacy and variety, according to Hayek, requires explanatory social theory so

that the mechanisms they use to co-ordinate the multiplicity of activities of individuals may be understood. Social theory is further necessary here because, unlike in the case of organisations, these spontaneous orders 'do not obtrude themselves on our senses but have to be traced by our intellect. We cannot see or otherwise intuitively perceive this order of meaningful actions, but are only able mentally to reconstruct it by tracing the relations that exist between the elements.'²⁹ It is the task of social theory to undertake such reconstruction: 'Social theory begins with - and has an object only because of - the discovery that there exist orderly structures which are the product of the action(s) of many men but are not the result of human design.'³⁰ The specific task of social theory is to discover the rules, the observance of which has led to the evolution of the spontaneous order. In Hayek's view organisations do not pose similar social theoretical problems because their complexity is limited to what can be understood by the mind, or group of minds, which has consciously designed the organisation. The co-ordination of activities taking place in an organisation is explained by reference to the intentions of those that establish and direct it.

If Hayek's model is accurate, spontaneous orders - unlike organisations - are non-coercive and neutral because they do not impose external purposes on individuals. Hence Hayek's claim to neutrality between the pursuit of individual purposes depends on the validity of his distinction between spontaneous order and organisation. Two questions arise. First, is the distinction between organisation and spontaneous order as clear-cut as Hayek supposes? Second, is the spontaneous order as bereft of purpose as he supposes? If not then the claim that the rules of conduct governing spontaneous orders are value-free is called into question. If this is indeed the case then the validity of Hayek's claim that liberty is the foremost value in society comes to rest on his normative justification of liberty as an end in itself.

Hayek himself is equivocal about whether orders are to be classified as *either* a spontaneous

order or an organisation; or whether spontaneous order and organisation are characterisations of two ideal types of social co-ordination. Even in the course of a single chapter³¹ Hayek demonstrates the ambiguity of his position. After presenting spontaneous order and organisation as a dichotomy,³² and establishing that one of the fundamental differences between the two is that the co-ordination of spontaneous order is rule governed while that of organisation is command centred, he says:

[T]o some extent every organisation must rely also on rules and not only on specific commands. The reason here is the same as that which makes it necessary for a spontaneous order to rely solely on rules: namely that by guiding the actions of individuals by rules rather than by specific commands it is possible to make use of knowledge which nobody possesses as a whole. Every organisation in which members are not mere tools of the organiser will determine by commands only the function to be performed by each member, the purposes to be achieved, and certain general aspects of the methods to be employed, and will leave the detail to be decided by the individuals on the basis of their respective knowledge and skills.³³

Hayek appears to be arguing that an organisation, if it is to operate successfully using the knowledge and skills of its members, must possess at least some of the features of a spontaneous order, especially in respect of individuals being guided by general rules rather than by specific commands. The problem is that he obscures his own distinction between 'spontaneous' and 'made' orders. One example is that cited above, where he notes that organisations also depend on rules. More significant is that Hayek suggests that changing the rules may influence the general character of a spontaneous order: '... even where, as is true of a society of human beings, we may be in a position to alter at least some of the rules of conduct which the elements obey, we shall thereby be able to influence only the general character and not the detail of the resulting order'.³⁴ Further confusion is generated when Hayek discusses the possibility of inducing a spontaneous order by designing and introducing appropriate rules:

...it is possible that an order, which would still have to be described as spontaneous, rests on rules which are entirely the result of deliberate design. In the kind of society with which we are familiar, of course, only some of the rules which people in fact observe, namely some of the rules of law (but never all, even of these) will be the

product of deliberate design, while most of the rules of morals and custom will be spontaneous growths.³⁵

Hayek has blurred the boundaries between organisation and spontaneous order, which he had previously argued were unequivocal. If a spontaneous order is designed, even in part, or its general character is to be changed, even in part, then the designers of the order, or those who wish to change its character, must have some reason for doing so. He starts by arguing as follows: '[M]ost important, however, is the relation of a spontaneous order to the conception of purpose. Since such an order has not been created by an outside agency, the order as such also can have no purpose, although its existence may be very serviceable to the individuals which move within such an order'.³⁶ And intervention in the spontaneous order can be extremely damaging because '[T]he spontaneous order arises from each element balancing all the various factors operating on it and by adjusting all its various actions to each other, a balance which will be destroyed if some of the actions are determined by another agency on the basis of different knowledge and in the service of different ends.'³⁷ In conclusion he claims that:

What the general argument against 'interference' thus amounts to is that, *although we can endeavour to improve a spontaneous order by revising the general rules on which it rests, and can supplement its results by the efforts of various organizations, we cannot improve the results by specific commands that deprive its members of the possibility of using their knowledge for their purposes.*³⁸

So the reason why Hayek believes that amending of the general rules of a spontaneous order is justified is that it allows people to utilise their own knowledge to their own advantage. That being the case, those who wish to preserve the spontaneous order in some way must be happy with the spontaneous order *as it is*: and those who wish to restore or amend a spontaneous order must believe a restored or amended order will be *better* in the sense that it will allow individuals to use their own knowledge in their own way. There is clearly, then, a normative dimension to spontaneous orders. If they can be changed or designed they must

have the capacity to be evaluated. If they are to be evaluated, it must be against some conception of what is or is not good, in this case the individual utilisation of knowledge. And if this is so, then the conception of spontaneous order cannot be neutral: it must have a normative dimension.

The reason why Hayek wishes to induce or otherwise adapt spontaneous orders is to promote liberty and prevent coercion. He believes that association in terms of spontaneous order - and governed by the rule of law - is the only mode of human order that does not coerce its members by imposing external purposes upon them. Hayek's normative position, therefore, must be that liberty is good and coercion is bad: and he offers three types of justification for this position. The first is an instrumental defence of liberty: liberty is justified because it is the means to achieve other values, such as prosperity, or perhaps an overall increase in a happy population. This defence emerges from Hayek's philosophy of mind and theory of knowledge. The second is built on the same intellectual foundations: because we can never know our own mind, we must distrust the 'constructivist rationalism' which claims that reason can tell us how to build idealised versions of societies. Thus we must hold a prejudice in favour of the established institutions and traditions which have allowed liberty, and with it the ability of individuals to use their own tacit knowledge, to flourish. Again, this defence of liberty is instrumental: the societies which have in the course of their natural (spontaneous) development maintained market economies, and have an established rule of law, have usually enjoyed more material prosperity, and hence have been able to maintain greater populations in greater relative comfort than those which have not. Hayek's third type of justification is this: liberty has an intrinsic moral value of its own; intrinsically it is so precious that other values must be sacrificed so that it can be protected. This mixture presents three related problems for Hayek. First, his instrumental positions can neither be neutral, nor ultimately offer any secure normative justification for liberalism: for if they

happen to fail in providing the desired ends, then it would be legitimate to replace the liberal order with an order that did deliver them. Second, Hayek's approach does not offer the defence of liberty as the foremost value in society that he needs because it rests on questionable empirical assumptions, and ones that confirm Hayek's subjectivism. Finally, Hayek is left with a combination of two types of theoretical argument, normative and empirical, which he attempts to run together but which cannot be run together. A consistent philosophical case for a particular view of society such as Hayek's can be based *either* on the consequences of what liberty can produce in measurable terms, such as prosperity, increase in population, *or*, most famously, happiness (an instrumental view); *or* it can be based on the moral value of liberty, which should be secured, irrespective of whether or not it promotes other valuable ends (a Kantian view). But it cannot be based on both together. In the remainder of the chapter I shall examine each in turn.

II - The empirical case for liberty

What is the basis of Hayek's empirical case? And why can't it be neutral? To explain the problems of Hayek's empirical case its foundation in his philosophy of mind and epistemology must first be examined. For his instrumental defence of liberty rests on his empirical psychology and epistemology, the conclusions of which lead him to assert that the only way for human society to flourish is to have liberty as the foremost value in society. Hayek's most complete version of his empirical psychology and its relationship to his epistemology appears in *The Sensory Order*,³⁹ in which he wants to discover 'the kind of process by which a given physical situation is transformed into a certain phenomenal picture'.⁴⁰ In other words, the question that Hayek is addressing is this: why is it that the way we perceive the world through our senses is different from the way we might describe the world in the language of science? Hayek's answer to this question is the beginning of his

theory of how the mind operates.

For Hayek, the mind is a product of two evolutionary processes, one physical, the other cultural. According to Hayek the physical structure of the brain has evolved in certain ways that are reflected in the consistency of perception that most human beings share. At the same time, the environment and experiences of particular people will lead individual minds to evolve in different directions and guide perceptions in different ways. As people live, the various experiences they encounter all affect their mental evolution and development, so that at any given point the mind can be seen as the product of these historical and experiential events. Thus the mind is a cultural product that evolves from a particular physical structure.⁴¹ Hayek would accept that there is a physical basis to the mental order, but he believes that the mind cannot be reduced to simple physical categories. The self-organising properties of the mind take it beyond our ability to understand in physical terms, despite its ultimately physical basis.

The neural order of the mind is, for Hayek, largely an 'apparatus of classification'.⁴² To recognise something as a distinct sensory 'datum' it must be differentiated from other sensations. Hayek's theory suggests that the mind has evolved to perform this function - the mind is a 'process that creates the distinctions in question'.⁴³ The various combinations of neural firings that comprise a given mental event have evolved as the means by which we interpret the world. The mechanism of that evolution is the success of any given picture of the world in guiding individual actions in that world. Sets of classification that do not successfully guide actions (that is, ones that do not in some sense correspond to the physical world) will prevent the organism whose actions are being guided from thriving. Classification processes which survive are those which most accurately conform to external events.

Hayek employs the metaphors of 'map' and 'model' to describe the mental order more precisely.⁴⁴ The 'map' refers to the semi-permanent neural connections and linkages the brain has built up as the result of past experience. In some sense it is the classifying structure that drives mental functions. The 'model' refers to the 'pattern of impulses which is traced at any moment within the given network of semi-permanent channels'⁴⁵ derived from the specific environment in which the person is currently placed. The map generates the model. Based on previous sensory experience, the mind gives us a model of the present environment that serves as the backdrop for classifying incoming sensory information in the current context. The model is also forward-looking in that it enables actors to anticipate the likely consequences of both their own actions and of external events. Hayek envisions a feedback process between the two, as input from the various existing environments can eventually change the map, while the map is what creates any specific model. Hence, the mind is both the product of experience and what classifies that experience.

What is Hayek's purpose in presenting this account of the operation of the human mind? At the beginning of this chapter I pointed out that his goal was to restate and refine the arguments of the early thinkers of classical liberalism. Moreover, Hayek particularly points to Hume and Kant as his two most important intellectual progenitors.⁴⁶ From Hume comes Hayek's emphasis on spontaneous order and the empirical basis of society and morality. From Kant comes Hayek's emphasis on freedom and the importance of universal rules of justice. Indeed, Chandran Kukathas⁴⁷ interprets Hayek's project as one that attempts to bridge Hume and Kant in order to achieve an integrated theory of the liberal order:

[H]ayek's critique of constructivist rationalism, and his account of the evolution of rules of conduct in the theory of the spontaneous order are strikingly Humean in character. His political philosophy is, to a considerable extent, founded in Humean assumptions about the nature of society and the place of justice within it. He sees morality as a social institution composed of rules of conduct which have evolved within the social order and derive their legitimacy, ultimately, from the fact they facilitate the co-ordination of human activities and enhance society's prospects of survival. He thus

follows Hume in regarding justice as an institution which enables man to cope with his circumstances and denying that the rules of justice can be discovered by reason. At the same time, however, Hayek appears to reject the ideas of such a 'conservative' justification of the liberal order. In attempting to uncover the *principles* of a liberal social order he turns to a Kantian emphasis on the importance of freedom as the master of the Great Society. His conception of freedom as 'independence of the arbitrary will of another' is indeed strikingly Kantian, emphasising as it does that liberty means 'the absence of a particular obstacle-coercion by other men'.⁴⁸

For Hayek, the mind is a classification system in the Kantian sense where the classes are part of the structure of the mind, not of the world itself. However, there is also a Humean dimension to Hayek's theory of mind, for he denies that these Kantian categories are a *permanent* part of the structure of the mind. Rather, the categories are the product of biology interacting with empirical experience,⁴⁹ that is, they evolve as the particular human actor grows and learns. Hayek's theory of mind, then, tries to provide an empirical explanation for the source and continuing evolution of these *a priori* categories. It is in this way that he is trying to straddle Hume and Kant. The mind, for Hayek, is what enables the to world appear organised and sensible to individuals, rather than as a chaotic blur of random images and movement. The orderliness of the world is a product of the mind, not a feature of the world itself. Human understanding of the world is orderly because the mind orders sensations - hence 'the sensory order'. The mind, therefore, does not translate sensations into a mental picture; it is the means by which we classify sensations in the first place. It is not, however, an unchanging, universal classificatory structure, but itself an empirical phenomenon.

The most important implication of this 'Humeo-Kantian' theory for Hayek's social and political views is that individuals can never fully explain their own minds. If the mind is the way in which individuals classify the world around them, they can never step back and attempt to view the mind itself as a sensory input. As Hayek says, 'any apparatus of classification must possess a structure of a higher degree of complexity than is possessed by the objects which it classifies ... therefore, the capacity of any explaining agent must be

limited to objects with a structure possessing a degree of complexity lower than its own'.⁵⁰

Therefore, he concludes, 'there also exists ...an absolute limit to what the human brain can ever accomplish by way of explanation'.⁵¹ The corollary of the fact that no one can ever fully know his or her own mind is that not all human knowledge can be fully articulated. Hayek's psychology declares that the order of connections in the mind is

...modified by every new action exercised upon it by the external world, and since the stimuli acting on it do not operate by themselves but always in conjunction with the process called forth by the pre-existing excitatory state, it is obvious that the response to a given combination of stimuli on two different occasions is not likely to be exactly the same. Because it is the whole history of the organism which will determine its action, new factors will contribute to this determination on the latter occasion which were not present at the first. We shall find not only that the same set of stimuli will not always produce the same responses, but also that altogether new responses will occur.
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The crucial point here is that the knowledge that allows the mind to evolve is not built up by itself, but through selection amongst mechanisms producing different patterns. The mind's evolution is blind. It depends not on premeditated objectives or foresight, but on a process of evolution, or a discovery procedure, that gropes through the space of what is possible, and in some instances chances upon rules that fit the requirements of survival and flourishing:

[I]t seems to me that the organism first develops new potentialities for actions and only afterwards does experience select and confirm those which are useful as adaptations to typical characteristics of its environment. There will thus be gradually developed by natural selection a repertory of action types adapted to standard features of the environment. Organisms become capable of ever greater varieties of actions, and learn to select among them, as a result of some assisting the preservation of the individual or the species, while other possible actions come to be similarly inhibited or confined to some special constellations of external conditions.⁵³

Thus it is impossible to state or communicate all of the rules which govern our actions, including our communications and explicit statements.

The limits of explicit human knowledge form the basis for Hayek's political and social thought. Social co-ordination processes and the institutions that comprise them ultimately

consist in the communication and use of knowledge.⁵⁴ The problem of social co-ordination is the problem of how best to discover and utilise the diverse and fragmentary pieces of knowledge embedded in individual minds. In the same way that classical economics focuses on the role of markets in co-ordinating the division of labour so that the economy can grow, Hayek emphasises the division of knowledge inherent in complex social orders and argues that spontaneously evolved institutions, such as the market, are the only way to achieve the epistemological co-ordination necessary for economic growth, and hence prosperity. This point is fundamental to Hayek's epistemological and empirical psychological case for the liberal order. The necessity of the role of spontaneously evolved institutions lies in this, that only they can enable a society to make use of the knowledge possessed by individual economic actors, because a substantial portion of that knowledge is tacit and cannot be consciously known and communicated linguistically.

Hayek's case for the rule of law, and his demand that the remit even of thoroughly democratic governments be limited, follow directly from his epistemology and theory of mind. As I shall now show, however, the flaws in Hayek's empirical defence of liberty also emerge from these arguments. If Hayek's analysis is accurate, then his two instrumental defences of freedom flow from his explanatory social theory. The first is consequentialist. Freedom produces good results. In *Knowledge, Evolution and Science*⁵⁵ he claims that the measure of the success of a social system is the number of people it is able to sustain. His theory of human evolution is that of the 'natural selection' of traditions which enhance the group's survival prospects. The exercise of liberty under the rule of law is valuable because it offers the best opportunity for every individual to utilise their own tacit knowledge. The utilisation of this widely dispersed knowledge facilitates the increased productivity that allows both human population and their level of material prosperity to increase. Such arguments have led John Gray to classify Hayek as an indirect utilitarian.⁵⁶ Roland Kley also

understands Hayek as offering an instrumental justification for the liberal order:

... it is ultimately his view that the institutions together forming the basis of the liberal market society can be shown to be morally legitimate by demonstrating that they alone are capable of co-ordinating social and economic life in a way that prevents mass hunger, produces general prosperity, and ensures social peace.⁵⁷

This point is crucial for Hayek's first instrumental argument for the defence of liberty. Any instrumental defence of liberty automatically leads to the question that, if the liberal order fails to deliver the goods of preventing mass hunger, promoting general prosperity and maintaining social peace, should the liberal order not then be discarded in favour of a society which does produce those goods? This is a dilemma for Hayek; and its implications for his theory will be examined later in the chapter. For the moment I shall put that aside and concentrate on Hayek's positive argument for liberty and the liberal order.

The liberal order is a dynamic order characterised by what Hayek describes as 'progress'. The 'progress' facilitated by the liberal order is a process of development and transformation of the human intellect. It is an adaptive, educative process in which wants and values constantly change. However, what are the consequences of this constant change? And, if Hayek is to have a coherent instrumentalist moral theory, then by what norms are such changes to be evaluated? The difficulty which Hayek faces is that 'progress' brings with it changes, not only in the form of individual accomplishments, but also in terms of individual goals: these are no less subject to the dynamic process of 'progress'. It is therefore doubtful whether the new circumstances created by 'progress' can be seen as 'better' than what has gone before. Individuals' goals are constantly changing; even if the liberal order is indeed the most effective way of facilitating the pursuit of individual goals, there is no way of evaluating whether or not individuals are better off for having achieved them. Hayek concedes this when he says:

... often it [progress] also makes us sadder men. Though progress consists in part in

achieving things we have been striving for, this does not mean that we shall like its results or that we shall all be gainers. And since our wishes and aims are also subject to change in the course of the process, it is questionable whether the statement has a clear meaning that the new state of affairs that progress creates is a better one. Progress in the sense of the cumulative growth of knowledge and power over nature is a term that says little about whether the new state will give us more satisfaction than the old. The pleasure may be solely in achieving what we have been striving for, and the assured possession may give us little satisfaction. The question whether, if we had to stop at our present stage of development, we would in any significant sense be better off or happier than if we had stopped a hundred or a thousand years ago is probably unanswerable.⁵⁸

Hayek is here denying the possibility of a normative ranking of 'states of affairs' - as he has to on the basis of his philosophy of mind. Hayek cannot rank states of affairs because of the claims he makes about the inarticulate nature of human knowledge and the impossibility of individuals knowing their own mind. Hayek's whole empirical psychology and epistemology denies the possibility that, by using reason, an individual or group of individuals can somehow stand outside an existing social order and evaluate competing social 'states of affairs'. For Hayek, as Kukathas notes:

[R]eason cannot provide us with the criteria by which to compare states of affairs; it is merely a capacity which is produced or created (and modified) by progress. Thus reason can identify inconsistencies among rules within a situation (or tradition) of behaviour but cannot stand outside the evolutionary process to evaluate the different states of affairs that rational action might lead to.⁵⁹

Hayek's criticism of 'constructivist rationalists' is based on the idea that it is impossible for anyone to have the complete knowledge required to 'evaluate the different states of affairs that rational action might lead to'. Their argument is based 'on the fiction that all relevant facts are known to some one mind, and that it is possible to construct from this knowledge of the particulars a desirable social order.'⁶⁰ Thus, according again to Kukathas:

Hayek's defence of the liberal order is based not on the claim that its rules will produce end-states we would choose if we knew what alternatives were available, but on the contention that the rules of the liberal order enable us to adapt to a changing environment which is always creating states of affairs which we can never wholly anticipate, let alone choose.⁶¹

Hayek, then, is definitely neither a rule nor an act utilitarian. Is it possible that his critique of 'constructivist rationalism' might still accommodate some other form of consequentialist moral theory? But how can Hayek be seen as a consequentialist of any sort if he denies the possibility of comparing and choosing between states of affairs? Indeed, '[I]f there can be no comparative evaluation of alternative states of affairs, it is difficult to show how a liberal order (which facilitates adaptation to a changing environment) can be regarded as superior or preferable to that condition in which a non-liberal order sustains an impoverished and diminishing population.'⁶² Whatever form of consequentialism one adopts, it has to allow for one state of affairs to be identified as superior or preferable to another, and Hayek's theory explicitly excludes such a possibility.

By contrast, Hayek's insistence on the limits of reason allows an instrumental defence of liberty - but only in those societies which have an already established liberal tradition, because it is established liberal orders that have allowed liberty to flourish. This is what I term Hayek's conservative defence of freedom, a defence which emerges from his insistence that the power of reason is limited because of the impossibility of complete knowledge, and the inability of individuals to know their own mind. Having shown that Hayek's philosophy of mind is in tension with his consequentialist argument, I shall show how it supports a conservative normative defence of liberty within established orders.

III - The conservative case for liberty

Before going on to do that, however, it is important to establish what might allow a defence of the liberal order to be described as a conservative one. A good point to begin a discussion of putative conservatism in relation to Hayek is with Michael Oakeshott, the conservative whose ideas bear the closest resemblance to those of Hayek's liberalism. Oakeshott states:

[T]o be conservative, then, is to prefer the familiar to the unknown, to prefer the tried to the untried, fact to mystery, the actual to the possible, the limited to the unbounded, the near to the distant, the sufficient to the superabundant, the convenient to the perfect, present laughter to utopian bliss. Familiar relationships and loyalties will be preferred to the allure of more profitable attachments; to acquire and to enlarge will be less important than to keep, to cultivate and to enjoy; the grief of loss will be more acute than the excitement of novelty or promise. It is to be equal to one's own fortune, to live at the level of one's own means, to be content with the want of greater perfection which belongs alike to oneself and one's circumstances.⁶³

What Oakeshott is saying is that conservatives value those practices and institutions which exist here and now. This is clearly different from Hayek's view that liberty is valuable because it allows 'progress', which in Hayek's terms is a restless dynamic process, a process that facilitates change and innovation.⁶⁴ Oakeshott, however, does offer one important proviso, namely that the inclination to conservatism will, 'if the present is arid, offering little or nothing to be used or enjoyed' be 'weak or absent'.⁶⁵ The inclination to conservatism 'asserts itself characteristically when there is much to be enjoyed, and it will be strongest when this is combined with an evident risk of loss'.⁶⁶ This has been a constant theme within conservatism since it emerged as a recognisable tradition in Western thought. It is a point made most famously by Burke when he said of attempts to overthrow established government that 'it is with infinite caution that any man ought to venture upon pulling down an edifice which has answered in any tolerable degree for ages the common purposes of society, or on building it up again, without having models and patterns of approved utility before his eyes'.⁶⁷ Contemporary conservatives take a similar line. Irving Kristol, for instance, notes that 'institutions which have existed over a long period of time have a reason and a purpose inherent in them, a collective wisdom incarnate in them, and the fact that we don't perfectly explain why they 'work' is no defect in them, but merely a limitation in us'.⁶⁸ This implies of course that conservatism is fundamentally a subjective⁶⁹ doctrine, that there is no need for the social or political order to be objectively justified. Indeed, it cannot be thus justified because 'objectivity' is itself internal to tradition. On the basis of Hayek's contention

that it is impossible rationally to choose between states of affairs his doctrine too is subjective, matching the strong subjectivist strand within conservatism which, again, originates with Burke. When discussing liberty he notes:

I flatter myself that I love a manly, moral, regulated liberty as well as any gentleman of that society, be he who he will; and perhaps I have given as good proofs of my attachment to that cause, in the whole course of my public conduct. I think I envy liberty as little as they do, to any other nation. But I cannot stand forward, and give praise or blame to any thing which relates to human actions, and human concerns, on a simple view of the object, as it stands stripped of every relation, in all the nakedness and solitude of metaphysical abstraction. Circumstances ... give in reality to every political principle its distinguishing colour, and discriminating effect.⁷⁰

Equally, Burke makes clear that whether a value like liberty is good or bad depends on circumstance.⁷¹ And that there are limits to human reason: '[W]e are afraid to put men to live and trade each on his own private stock of reason; because we suspect that this stock in each man is small, and that each man would do better to avail themselves of the general bank and capital of nations and of ages.'⁷² These comparisons indicate a *prima facie* case for suspecting that Hayek's normative outlook is conservative. Now, how good is this *prima facie* case? Let us start by pursuing the comparison with Oakeshott's 'mainstream' conservatism.

His most important justification of conservatism is that people within an existing order have a disposition to maintain that order because they enjoy the benefits which accrue from it. But, beyond that basic contention, Oakeshott offers a series of arguments about why people should be attached to already extant institutions and orders. These arguments bear a striking resemblance to Hayek's anti-rationalism. Oakeshott, like Hayek, believes that there are two types of knowledge, knowledge of technique that can be articulated, like the knowledge in a cookery book, and practical knowledge embodied in skills, such as driving a car, which cannot. Furthermore immanent within Oakeshott's epistemology is a critique of rationalism based on the impossibility of possessing complete knowledge.⁷³ Finally, Oakeshott, like

Hayek, also identifies two ideal forms of human association: civil association (which corresponds in some ways to Hayek's spontaneous order); and enterprise association (which parallels Hayek's notion of an organisation).

Oakeshott's conservative defence of the established order stems from the dichotomy he identifies between civil association and enterprise association. Civil association is a formal relationship, while enterprise association is a substantive relationship. Oakeshott explains the distinction in the following terms. All actions and choices have a substance and a form. The substance of an action is a performance in which an individual seeks to achieve a satisfaction: for example, the performance of playing the violin, selling a house or asking directions. The form of an action is not what is done (the performance) but the manner in which it is done: playing in or out of tune, selling legally or fraudulently, asking the way politely or impolitely. The form of an action is the action in respect of its acknowledgement of a procedure: musical pitch, law, or good manners.⁷⁴ Oakeshott calls the procedure acknowledged in an action a 'practice'.⁷⁵ A practice is a set of formal considerations to be taken into account when acting. These formal considerations may be maxims, principles, rules, manners, uses, observances, offices or customs. They do not identify or specify what choices an individual shall make; they are considerations to be taken into account when acting. They qualify but do not determine substantive choices and performances: the rules of music do not tell a violinist to play a particular tune, they invite him or her to play in tune; the law governing property transfer does not tell some one to whom they may sell their house, or at what price, but that they must not misrepresent what it is they are selling; good manners do not tell an individual what to say, simply the manner in which it should be said. When individuals act they use a practice or set of practices composed of various procedural considerations. However, they also do something in particular - to return to the example used earlier in relation to Hayek, the form of driving does not specify the substance of a

destination. For Oakeshott, when individuals are associated in virtue of acknowledging a common practice their relationship is formal. Civil association, as Oakeshott defines it, is one such relationship; it is the formal relationship of individuals who acknowledge a system of law.⁷⁶ This system includes a legislative procedure for making, repealing and amending law, a judicial procedure for resolving uncertainties and disputes about whether or not on any particular occasion a law has been adequately subscribed to, and a procedure for enforcing and administering law.⁷⁷

Oakeshott further describes civil association as a moral practice.⁷⁸ It is non-instrumental in that it is not in any way concerned with the success or failure of substantive transactions and enterprises. It is not concerned with the satisfaction of wants, but solely with the terms under which the satisfaction of wants is sought. Civil association is association devoid of substantive purposes, therefore, and does not impinge on the freedom of individuals to pursue their own purposes. However, although there are similarities between civil association and spontaneous order, civil association differs from the latter in two important respects. On the one hand Oakeshott makes clear that civil association is an ideal type, that no state has ever confined itself exclusively to association in terms of a manner of living, or in terms of rules. All states combine, in different proportions, the character of the purposeless state, civil association and the purposive state, enterprise association.⁷⁹ The advantage of states where civil association is dominant is that they may be expected to afford the citizen

... the right to pursue his chosen directions of activity as little hindered as may be by his fellows or by the exactions of government itself, and as little distracted by communal pressures. Freedom of movement, of initiative, of speech, of belief and religious observance, of association and disassociation, of bequest and inheritance; security of person and property; the right to choose one's own occupation and dispose of one's labour and goods; and overall the 'rule of law': the right to be ruled by a known law, applicable to all subjects alike.⁸⁰

Furthermore, the rules of civil association are recognised in terms of their authority, rather than their desirability. The rules of civil association do not ask to be approved, they are not designed to persuade and they do not offer reasons why they should be obeyed. They are authoritative prescriptions and as such they neither require nor solicit approval. Individuals may argue about a rule and they may try to persuade their fellow citizens that the rule is good or bad, but the rules themselves do not argue or persuade. Citizens of the state as civil association (or *cives* as Oakeshott describes them) are related in virtue of recognising civil rules for what they are in themselves, namely authoritative proclamations of law. In other words they recognise the terms of their association, the rules, as authoritative.

The normative element of civil association derives from the approval of these terms, not simply of law, although law does play an important part. The approval of the practice of civil association is general and formal rather than the approval of specific purposes. Not every single rule or law needs to be approved by all individuals. But whether the desirability of a specific rule is accepted or not, members of civil associations accept its authority and they recognise that, until it has been changed or amended by the authoritative procedure for changing rules, it must be obeyed. Most significant, though, is that if the character of the way of life is enjoyed, rules that dramatically change that character must be avoided. Let me illustrate this point with a sporting analogy. Take the game of cricket. Some players and followers of the game may think that the current 'leg before wicket' law is inconsistent and needs to be amended. Nonetheless, until the body recognised as being authoritative alters it, players and spectators accept that a batsman trapped 'leg before wicket' is out. Such amendments are often debated and an adjustment in such a law would not dramatically change the nature of the game that players enjoy playing and spectators enjoy watching. What is not debated or discussed is change to the law which forbids the bowler throwing the ball at the opposing batsman instead of bowling it at him; for to do so would be to entirely

change the nature of the game which players and spectators enjoy and appreciate.

Oakeshott's defence of the state as civil association stands on two pillars, then, both of which have an instrumental element. The first is the typically conservative approach, that we maintain this type of association because, imperfect as it is, we have it and we value it: '[W]hat is esteemed is the present; and it is esteemed not on account of its connections with a remote antiquity, nor because it is recognised to be more admirable than any possible alternative, but on account of its familiarity.'⁸¹ In other words we seek to maintain what is for no better reason than it is there and it affords us sufficient enjoyment for us to want to keep it. The second defence is also instrumental, but it is more complex. Oakeshott's fullest account of this defence is in 'The Masses in Representative Democracy'⁸² where he traces the emergence of individuality in Europe, being concerned to explain that the emergence of individuality was an historical process, as 'artificial' and as 'natural' as the landscape:⁸³

[T]he character of the individual who emerged was determined by the manner of his generation. He became unmistakable when the habit appeared of engaging in activities identified as 'private'; indeed, the appearance of 'privacy' in human conduct is the obverse of the desuetude of the communal arrangements from which modern individuality sprang. This experience of individuality provoked a disposition to explore its own intimations, to place the highest value upon it, and to seek security in its enjoyment. To enjoy it came to be recognised as the main ingredient of 'happiness'. The experience was magnified into an ethical theory; it was reflected in manners of governing and being governed, in newly acquired rights and duties and in a whole pattern of living.⁸⁴

The emergence of individuality is the pre-eminent event in modern European history. Thus individuality, and hence the freedom to express it, are the product of the European intellectual tradition. Individuality and freedom are worth defending for no other reason than that they are the product of this particular tradition.⁸⁵ The potential clash between individuality and freedom and order are reconciled in Oakeshott's thought (as in Hayek's but in a slightly different way) by the recognition that, if individuality is to be enjoyed, rules must exist to prevent individuals impinging on the protected domains of other individuals.

Similarly Oakeshott sees no moral defence for what he describes as 'modern representative democracy'. 'It [modern representative democracy] is not to be understood... as an approximation to some ideal manner of government.... It is simply what emerged in Western Europe where the aspirations of individuality upon medieval institutions of government were greatest.'⁸⁶ Furthermore, the boundaries of representative, or indeed any other form of government which defends individuality cannot be determined by reasoning from first principles; they can be established, always provisionally and never indisputably, only by reasonings that are circumstantial and which invoke precedents, judgements and practices that are present in current political life. Oakeshott fundamentally rejects liberal rationalism. Although he would be in agreement with Hayek's non-rationalism, he would not share his account of its foundation: as he says in *Rationalism in Politics*, Hayek's theories are simply a species of doctrine, although a marginal improvement on the rest.⁸⁷ It is also clear that Oakeshott has Hayek in mind when he rejects 'the saddest of all misunderstandings of the state as 'civil association'.'

... that in which it is properly presented as association in terms of non-instrumental conditions imposed upon conduct and specified in general rules from whose obligations no associate and no conduct is exempt, but defended as the mode of association more likely than any other to promote and go on promoting the satisfaction of our diverse and proliferant wants.⁸⁸

Oakeshott's defence of 'civil association' and hence of freedom, is consequentialist, but of a different sort from Hayek's. Hayek recommends liberty as the only system which will maintain prosperity and an increased population, while Oakeshott recommends it because it is what we have and value. He also recognises that in the event of it ceasing to be valued or appreciated, change is inevitable, although it is probably undesirable, as there is no guarantee that change will be for the better, and there is always the possibility that things that are valued will be lost by change. Thus, for Oakeshott, or any conservative for that matter, while change is inevitable, it must be slowly mediated and in tune with existing

traditions of behaviour, and it is always accompanied by a sense of loss.

Let me make clear that I am not claiming that this conservative position can be simply foisted on Hayek. Rather, it illustrates that what I have described as Hayek's conservative instrumental defence of liberty bears a striking resemblance to the work of a conservative philosopher like Michael Oakeshott. It is a resemblance that both Oakeshott and some of his interpreters also recognise.⁸⁹ However, although elements of Hayek's thought - such as the limitations he places on the power of reason and his epistemology - support a conservative conception of the good, other elements in his thought conflict with conservatism, in particular his notion of progress and - because for a conservative the liberal order cannot be shown to be intrinsically better than any other established form of political or social order - his attempted vindication of the 'Great Society' as capable of justification.

Hayek defends liberty because it secures 'progress', a term he uses in two senses. In one sense it denotes the advance in material well being that can be seen in societies enjoying economic growth: the value of progress lies in the higher living standards and reduced distributive inequality that it brings.⁹⁰ In a second sense, however, it refers not to directly materialist instrumental goals, but to the existence of the conditions of individual freedom; conditions which allow individuals opportunities to experiment and learn to use their knowledge for their own purposes. 'Progress' in this sense is characterised as a 'process of formation and modification of human intellect, a process of adaptation and learning in which not only the possibilities known to us but also our values and desires continually change'.⁹¹

[W]hat matters is the successful striving for what at each moment seems attainable. It is not the fruits of past success but the living in and for the future in which human intelligence proves itself. Progress is movement for movement's sake, for it is the process of learning, and in the effects of having learned something new, that man enjoys the gift of his intelligence.⁹²

Hayek's view of progress here is peculiar and contradictory. His psychology and epistemology laud the value and necessity of tradition in ensuring liberty, and hence progress, but nothing is more likely to undermine traditions and render tacit knowledge valueless than the type of restless striving which characterises Hayek's view of progress. It is a question of progress *for its own sake* - and such a conception of progress is manifestly not conservative.

The second reason why Hayek's theory cannot simply be reconciled with conservatism lies with Hayek's own 'constructivist rationalism': and in the postscript to *The Constitution of Liberty* he explicitly explains why he is not a conservative.⁹³ Hence Oakeshott's peremptory dismissal of Hayek:

[T]he main significance of Hayek's *Road to Serfdom* [is] not the cogency of his doctrine but the fact that it is a doctrine. A plan to resist all planning may be better than its opposite, but it belongs to the same style of politics. And only in a society deeply infected with rationalism will the conversion of traditional resources of resistance to the tyranny of Rationalism into a self-conscious ideology be considered a strengthening of those resources.⁹⁴

Oakeshott, as a conservative, rejects not only a theory of progress such as Hayek's, but also the very idea that general principles can be used to direct political conduct. Hayek for his part regards conservatism as 'a useful practical maxim, but one which does not give us any guiding principles which can influence long-range developments'.⁹⁵ For Hayek, the decisive objection to any conservatism is that it is unable to offer an alternative to any direction in which society is moving;⁹⁶ so that the fate of conservatives is to be dragged along a path not of their own choosing. Hayek, as a liberal, wants to guide the direction along which society is moving; he wants not just to understand how society functions as a spontaneous order, but also how the processes of a spontaneous order might be utilised to facilitate human progress. Hayek's criticisms of rationalism and rationalists are not criticisms of rationalism *per se*, as in the case of Oakeshott, but are directed at those who do not see limits to the extent to

which society can be directed by reason.

Hayek, that is to say, is against rationalism only in so far as it is unlimited. If it can promote liberty - and hence progress - then 'constructivist rationalism' is fine. Thus Hayek's 'conservative' defence does not offer a coherent explanation of the value of liberty: although we must hold a prejudice in favour of established institutions and traditions which have allowed liberty, in societies where these traditions are under threat, or do not exist, rules can and should be made, or remade, which will create or revitalise society as a spontaneous order. The problem with this defence, however, is that Hayek is attempting to impose an objective purpose, the defence of liberty, on what in fact is a subjectivist tradition of thought. At best his 'conservative' defence of liberty can be used only to justify existing successful liberal societies: where people are satisfied with their standard of material well-being and there is no clamour for change. It could not be used to promote liberty even in a society governed by a regime as repressive as, say, contemporary China, provided that that regime continued to retain the tacit support of the mass of the population and continued to offer the opportunity of material progress to most of its citizens. Although this cannot be what Hayek had in mind, it is nonetheless the best this type of defence of liberty can offer. While Hayek is not a conservative in the same way as Oakeshott or Burke, it is only conservatism which can fill the chasm between his epistemology, psychology and a valid defence of liberty.

IV - Hayek's putative Kantianism

Two, then, of the three justifications which Hayek offers for the defence of liberty fail. This leaves Hayek's final defence of freedom, his Kantian approach. Two of the most distinguished commentators on Hayek, John Gray and Chandran Kukathas, claim that his philosophy, in fact, has firmly Kantian foundations.⁹⁷ Gray argues that '[T]he entirety of

Hayek's work - and, above all his work in epistemology, ethics and the theory of law - is informed by a distinctively Kantian approach. In its most fundamental aspect, Hayek's thought is Kantian in its denial of our capacity to know things as they are, or the world as it is.⁹⁸ Furthermore,

[I]n all of his [Hayek's] writings, ... the distinctively Kantian flavour is evident in his strategy of working with postulates in regulative ideas, epistemological and normative, which are as metaphysically neutral, and as uncommitted to specific conceptions of the good life, as he can reasonably make them. It is this minimalist or even formalist strategy of argument that most pervasively expresses Hayek's Kantian heritage.⁹⁹

However, it is not apparent that Hayek is as unequivocally Kantian as Gray supposes despite its being an intellectual debt which Hayek explicitly acknowledges: 'I ... will not enlarge here on ... the obvious relation of all this to Kant's conception of the categories that govern our thinking - which I took rather for granted.'¹⁰⁰ And in *The Fatal Conceit* he writes:

[A]lthough I attack the *presumption* of reason on the part of socialists, my argument is in no way directed against reason properly used. By 'reason properly used' I mean reason that recognises its own limitations and, itself taught by reason, faces the implications of the astonishing fact, revealed by economics and biology, that order generated without design can far outstrip plans men consciously contrive. How, after all, could I be attacking reason in a book arguing that socialism is factually and even logically untenable?¹⁰¹

The sympathy is clear with Kant's argument that '[T]he greatest and perhaps sole use of all philosophy of pure reason is therefore negative; since it serves as a discipline for the limitation of pure reason.'¹⁰² Hayek also offers a Kantian approach in *The Sensory Order*, where he disavows any concern for 'how things really are in the world', affirming that '... a question like 'what is X?' has meaning only within a given order, and within ... this limit it must also refer to the relation of one particular event to other events belonging to the same order'. For Hayek, as for Kant, the limits of reason must be established internally, through reason itself. For both, the limitations of reason indicate the limits of possible knowledge. Hayek indicates that these are logical, not empirical, speaking of 'the permanent limitations of our factual knowledge'.¹⁰³ He is perhaps at his most Kantian in the *Constitution of Liberty*

when he writes:

The recognition that each person has his own scale of values which we ought to respect, even if we do not approve of it is part of the conception of the value of the individual personality ... believing in freedom means that we do not feel entitled to prevent him [an individual] from pursuing ends of which we disapprove so long as he does not infringe the equally protected sphere of others.

A society which does not recognise that each individual has values of his own which he is entitled to follow can have no respect for the dignity of the individual and cannot really know freedom.¹⁰⁴

But Hayek's Kantian approach neither offers the defence of liberty as the foremost value in society that he needs nor is as close to Kant as Gray thinks: for it rests only on empirical assumptions so that his position is in the end subjective. But since these are subject to contingency it is impossible for Hayek to argue to an objective - properly Kantian - viewpoint from which to develop a universal and immutable moral defence for liberty.

On the one hand what Hayek purports to show with his putative Kantianism is that liberty is valuable in itself; that is, that the material consequences which arise from the establishment of an order based on liberty are completely irrelevant to the issue of whether or not liberty is a good. On the other hand, - if Hayek had really adopted a Kantian position - he would have had to argue that there are universal and immutable moral truths on the basis of which to establish the liberty of the individual. But Hayek argues, rather, that there are certain specific sets of circumstances that are favourable to liberty and which should be maintained, not because they are expressions or instantiations of universal immutable rules, but because they have, *as a matter of fact*, established liberty in particular sets of circumstances, and because they have, *as a matter of fact*, been successful in establishing conditions which allow the survival in relative comfort of a greater number of people than would otherwise be the case. Hayek's subjective case for liberty, therefore, rests on empirical and matter of fact claims about the value of liberty in increasing the number of, and improving material conditions of, human populations. In brief Hayek is attempting to run a deontological and a

teleological argument simultaneously. He is arguing that liberty is both valuable as an end in itself and for the consequences that result from it.

In order to explain fully the failings of Hayek's putative Kantianism let us remind ourselves of some central points within Kant. His belief in the unknowability of the rules that govern the human mind stems from the dualism between phenomenon and noumenon, phenomenon being the appearance of a thing, and noumenon being the thing in itself. What lies behind this distinction is Kant's conviction that the thing in itself is unknowable, whereas the phenomenon, or the thing as it appears, is knowable:

... the phenomenon is knowable because Kant believes it derives from the human mind. In other words, the thing appears as it does because of the unifying activity the ego undertakes on the manifold of experience, forming it into an object. The noumenon, is on the other hand, unknowable since it simply provides the permanent basis of experience.¹⁰⁵

The distinction between the phenomenon and the noumenon underlies Kant's concept of man, who has

two points of view from which he can regard himself and from which he can know laws governing the employment of his powers and consequently governing all his actions. He can consider himself first - so far as he belongs to the sensible world - to be under the laws of nature (heteronomy), and under laws which being independent of nature, are not empirical but have their ground in reason alone.¹⁰⁶

For Kant, we have a dualistic nature. We belong to the world of sense or the phenomenal world, and to the noumenal world. The two worlds give rise to the related worlds of everyday life and the world of morality. In everyday life, individuals are part of the world of sense, with a noumenal substratum not open to knowledge. However, with respect to the moral life, individuals are independent of this unknowable substratum. According to Kant, because individuals are dealing with values and motives, which fall within thought alone, our knowledge is not limited. In their moral life, individuals can consider themselves as noumena because, when they are dealing with the moral self, if individuals consider

themselves as part of the intelligible world, they cannot understand the causality of their own wills except through the Idea of freedom; because to be independent of determination by causes in the sensible world is to be free. Free will, that is to say, is the product of understanding ourselves as intelligible beings.¹⁰⁷ The implication of such a position is that, for Kant himself, morality is not the product of tradition and evolution, but is produced *a priori* by reason.

Despite this problem however - for Hayek, as we have seen, is avowedly anti-rational - Gray maintains that Hayek is essentially Kantian. Kukathas, to some extent, recognises that there are difficulties in interpreting Hayek this way, noting the implications of the flaws in Hayek's Kantianism for his defence of liberty. Kukathas believes that there are three major claims in Hayek's account of justice which suggest that his is a fundamentally Kantian moral philosophy:

1. The most basic and important test of justice lies in the principle of universalisability.
2. Laws are just in so far as they are not arbitrary commands imposed by others (but laws we would give to ourselves).
3. Justice is concerned with the distribution not of benefits and burdens, but of freedom.¹⁰⁸

While Kukathas does not directly pursue the nature and extent of Hayek's Kantianism, arguing rather that Hayek's ambitious project to combine Humean and Kantian ethical claims in a coherent moral theory of liberalism ultimately fails, his claims nonetheless offer a ready means of exploring the difficulties to which I have alluded.

The first indication that Hayek's purportedly Kantian defence of liberty is unsustainable -

because he vitiates that very Kantianism - arises from his prerequisite that laws, to be just, must fulfil a universalisation requirement. Hayek seems to understand this requirement in two related, but different ways. He says that '[T]he appropriate interpretation is suggested by the manner in which Immanuel Kant approached the problem, namely by asking whether we can 'want' or 'will' that such a rule be generally applied.'¹⁰⁹ However, he also says that 'as a test of the appropriateness of a rule, the possibility of its generalisation or universalisation amounts to a test of consistency or compatibility with the rest of an accepted system of rules'.¹¹⁰ As Kukathas points out,¹¹¹ although Hayek doesn't recognise it, he [Hayek] is considering 'universalising' a rule in two different contexts, each producing its own distinctive results:

[I]f universalization takes place in the context of a system of accepted rules and the problem is regarded as one of deciding whether or not the rule in question can also be accepted as consistent and compatible with existing rules, the test of universalization does not exclude rules of distribution if the accepted system is a system of distributive procedures. All that would be required of the new rule is that it not come into conflict with existing (distributive) arrangements. If, however, universalization does not take place in the context of a system of accepted rules but is a test applied to every rule, and so is not a test concerned to reconcile a new rule with an established system but a test whether the rules of conduct within any system can be universally willed, then universalization would (in Hayek's view) render rules of distribution unjust. Certain rules cannot apply equally to all since some would be required to obey laws (of taxation, for example....) that others were not. This argument is unsound since there is no reason why a conditional principle or rule ('if you are rich you must pay more tax') cannot be universalized. It is clearly this second understanding of universalization that Hayek has in mind when criticizing the idea of social justice...¹¹²

However, there is also a simpler point to be made here. What both these two interpretations have in common, and what conflicts sharply with Hayek's claim that law and justice are the product of social evolution, is that any adjudication of the universalisability of a rule, by either method, requires the ability to stand back to some archimedean point to judge either whether or not it is consistent or compatible with the rest of the accepted system of rules, or whether or not we can 'want' or 'will' that such a rule be generally applied. But Hayek has ruled out such an approach with both his epistemology and his philosophy of mind. But

perhaps Hayek might not understand universalising a rule in quite the same sense as Kant.

Kant intended the idea of universalisability to capture and express the substance of morality: the universalisation test would reveal whether or not a particular maxim or a principle of action was a rule of morality.¹¹³ Kant defines universalisation thus: '[E]very action which by itself or by its maxim enables the freedom of each individual's will to co-exist with the freedom of everyone else in accordance with a universal law is *right*.' Kant goes on to argue that 'if my action or my situation in general can co-exist with the freedom of everyone else in accordance with a universal law, anyone who hinders me in either does me an injustice; for this hindrance or resistance cannot co-exist with freedom in accordance with universal laws'.¹¹⁴ This, as Gray puts it, amounts to the position that 'if a rule or a maxim is to be acceptable as just, its application must be endorsed by rational agents across all relevantly similar cases'.¹¹⁵ Hayek's view, given his evolutionary psychology, is rather different, however. Whereas the Kantian version of the test of universalisability adjures individuals to deliberate as rational beings and members of the world of reason, Hayek wants individuals to do so as members of existing liberal orders, or of potential liberal orders. The criterion that Hayek actually offers for the universalisability of a rule, i.e. whether it should be accepted as just, is in the functional contribution it makes to the generation of spontaneous economic order. Thus the Hayekian universalisation turns out to be an

[I]mmanent ... criticism that moves within a given system of rules and judges particular rules in terms of their consistency or compatibility with all other recognised rules in inducing the formation of a certain kind of order of actions.¹¹⁶

The great body of rules which in this sense is tacitly accepted determines the aim which the rules being questioned must also support; and this aim ...is ...the maintenance or restoration of an order of actions which the rules tend to bring about more or less successfully.¹¹⁷

In these passages, Hayek is using the test of universalisability in the context of an already established system of rules. Although the system is not directly specified in his discussion of

the Kantian test, the system he has in mind is that of the liberal order which has evolved over time. The practical thrust of Hayek's test is simply to keep on refining, or in the case of non-liberal orders, establishing, the institutional framework of a liberal order. As I explained earlier, Hayek's rules of just conduct are requirements for co-ordination and efficient co-operation and are moral or just to the extent to which their observance contributes to the generation and maintenance of a liberal order:

... justice is an attribute of human conduct which we have learnt to exact because a certain kind of conduct is required to secure the formation and maintenance of a beneficial order of actions. The attribute of justice may thus be predicated about the intended results of human action but not about circumstances which have not been deliberately brought about by men. Justice requires that in the 'treatment' of another person or persons, i.e. in the intentional actions affecting the well-being of other persons, certain uniform rules of conduct be observed. It clearly has no application to the manner in which the impersonal process of the market allocates command over goods and services to particular people: this can be neither just or unjust, because the results are not intended or foreseen, and depend on a multitude of circumstances not known in their totality to anybody. The conduct of the individuals in that process may well be just or unjust; but since their wholly just actions will have consequences which were neither intended nor foreseen, these effects do not thereby become just or unjust.¹¹⁸

Crucially, he goes on:

[T]he fact is simply we consent to retain, and agree to enforce, uniform rules for a *procedure which has greatly improved the chances of all to have their wants satisfied*, ... With the acceptance of this procedure the recompense of different groups and individuals becomes exempt from deliberate control. *It is the only procedure yet discovered in which information widely dispersed among millions of men can be effectively utilized for the benefit of all - and used by assuring to all an individual liberty desirable for itself on ethical grounds.* It is a procedure which of course has never been 'designed' but which we have learnt gradually to improve after we had discovered how it increased the efficiency of men in the groups who had evolved it.¹¹⁹

What Hayek is saying here is that we adopt universalisable rules for the liberal and/or market order because it is a procedure that has 'greatly improved the chances of all to have their wants satisfied' - and this could hardly be more different from Kant's position. This dispersed knowledge, which constitutes the mechanism by which such want satisfaction is achieved, can be guaranteed only by ensuring that everyone is guaranteed individual liberty,

and not for the consequential reason of satisfying wants. It is 'desirable for itself on ethical grounds'. Now that appears Kantian; but the appearance is deceptive, for Hayek does not at all mean by this what a Kantian would - or should. His 'ethical grounds' are not Kantian givens but rather the outcome of empirical claims about want-satisfaction. For the point is that if something is to serve as additional justification it cannot at the same time contradict the original justification. Hayek, then, has made two claims here: on the one hand he has claimed that the liberal order is the most efficient order for satisfying human wants; on the other he claims that liberty is valuable for its own sake - but this would itself have to rest on a successful empirical claim regarding the value of the liberal order in satisfying human wants.

V - Hayek's inconsistency

As I argued earlier, Hayek's empirical defences of liberty are inconsistent: his claim, then, that the liberal order is the only procedure yet discovered in which information widely dispersed among millions of men can be effectively utilised for the benefit of all, cannot be accepted as an empirical one. His only remaining defence of liberty is what looks like the Kantian idea that liberty is an end in itself, a point he makes forcefully in *The Constitution of Liberty*, where he says that '[liberty] demands that it be accepted as a value in itself, as a principle that must be respected without our asking whether the consequences in the particular instance will be beneficial'. But in the next sentence there is an important qualification: '[W]e shall not achieve the results we want if we do not accept it as a creed or presumption so strong that no considerations of expediency can be allowed to limit it.'¹²⁰ Liberty, that is to say, should be 'accepted as a value in itself'; but the reason why we should accept it as such are not at all Kantian. That 'we shall not achieve the results we want' if we fail to do so is a transparently instrumental argument. Hayek is again putting together a

deontological with a teleological argument. A truly deontological, or Kantian, argument would hold that liberty is valuable *whatever* the results and not just because it gives us 'the results we want'. At best Hayek seems to be adopting a species of indirect utilitarianism rather than Kantianism. Of course, given Hayek's contention that the test of universalisation amounts to a 'test of consistency or compatibility with the rest of an accepted system of rules,' his argument might be acceptable in conservative terms. For the 'accepted system of rules' to which Hayek is referring is the 'liberal order', so that, in effect, he is enlisting Kant in defence of an existing system of rules. Hayek in the end interprets universalisation in a political rather than in a metaphysical or moral sense. And that is precisely what marks an argument for certain political values as a conservative - for example Oakeshottian - one. Such an interpretation, whatever else might be said about it is, inimical to liberalism's espoused meta-political neutrality.

In order to demonstrate more clearly the problem Hayek has, it is worth reminding ourselves of the distinction made by Rawls, amongst others, between deontological and teleological moral theories.¹²¹ A deontological theory asserts that what is right does not depend on, but is independent of, what is good. So, for example, that we should keep our promises is not determined by the good consequences of doing so; right conduct requires us to keep promises, and this injunction is in no way dependent on any good consequences that come from keeping promises. Promise keeping is good because it is right; it is not right because it is good or because it produces good results. Teleological moral theories, on the other hand, maintain that what is right depends upon what is good. If promise keeping is right, it can only be so because it leads to good. The character of deontological moral theories thus contrasts sharply with the alleged deontological nature of Hayekian rules of just conduct. These rules depend on contingent empirical circumstances. If they happen to be such that a principled intervention (i.e. a change of the rules) is believed to produce superior outcomes,

that is a better result, in Hayekian terms, then it is entirely legitimate for rules to be changed. Now, this argument must be invalid unless Hayek's empirical case for liberty is proved beyond doubt - and it is apparent from previous discussions in the chapter that it is not. Hayek is therefore left with no satisfactory defence for the priority of liberty ahead of other values.

This presents a major problem for Hayek's project of defending the liberal order. His theory of human evolution as the 'natural selection' of practices which enhance the group's survival prospects leads him to argue that institutions like justice and property have value because, by making possible the utilisation of dispersed knowledge, they facilitate increased productivity, and so on.¹²² This would not be a problem for Hayek if he really did present a coherent normative case for liberty as the foremost value in society; but he does not. The difficulty this constitutes becomes clear in his critique of socialism. Hayek's dispute is not with the socialist aims of reducing inequality and abolishing poverty, but with the socialist method of redistributive intervention.¹²³ Many of his arguments against socialism attempt to show that socialist aims and socialist methods are incompatible:¹²⁴ '[S]ome of the aims of the welfare state can be realised without detriment to individual liberty, though not necessarily by the methods which seem most obvious'.¹²⁵ What Hayek manifestly fails to demonstrate is that these contentions are empirically sound. In the same way his reliance on contestable empirical claims leaves him open to the allegation that, should his empirical claims for liberty be demonstrated to be dubitable, then his theory only has a very weak normative basis to fall back on.

Without a normative basis, and lacking any proof of the empirical validity of his claims, Hayek's liberalism rests simply on those preferences that individuals agree upon as useful for their subjective purposes. In a recent article Tibor Machan summed up the difficulty faced

by liberalism without normative foundations:

[A]ny judgement of morally or politically good or bad, as well as right and wrong, comes to no more than a preference, a positive or negative feeling of the agent, lacking any objective moral import. Is the favourite political principle of classical liberals itself a mere subjective value? The answer is 'yes' despite the fact that the right to individual liberty on first impression seems to be well supported by this radical individualism. But it is only a matter of convenience, something we have adopted but might just as easily not have; we might have with equal justifiability have adopted something else-say the right to equality or security.

If this is all true, then people who prefer playing golf to defending freedom when the latter is in jeopardy do nothing wrong. Also, if someone ignores the plight of the hapless or the unjustly treated, there is nothing to be criticised about this choice. Feelings toward one's community or fellow human beings are in no way superior to feelings toward another visit to Las Vegas or playing tennis. Since there are no objective goods or objective values, neither the defence of liberty nor any other course of conduct is more important than any alternative.¹²⁶

Machan encapsulates Hayek's dilemma. Unless it can be shown that liberty has a moral value beyond expediency, then it becomes a choice to be rejected or ignored, either when it becomes inconvenient that it should be supported, or if another alternative offers better opportunities for progress and material well-being.

If, on the other hand, Hayek's empirical defence of liberty were wholly convincing then the weakness of the normative dimension to his thought would perhaps not matter too much. But it is not. Indeed the evidence, where it exists, is elsewhere. Now, whilst it is beyond my scope to offer a comprehensive empirical evaluation of Hayek's theory, one point is particularly germane. In the contemporary world economy most progress, in terms of technological advancement, is not originating in those societies closest to the liberal free-market model that Hayek advocates. Rather it is - or has been - occurring in the so-called 'tiger economies' of the Pacific Rim: but these societies are hardly liberal: they permit little individual choice and autonomy, and practice large scale government intervention in the economy. But that does not mean that Hayek would want Britain and the USA to adopt the Singaporean model of society and government. His whole system is predicated on the

assumption that the western liberal order is uniquely valuable insofar as it expresses in some sense the essence of human nature through liberty and individuality. Hayek's problem is that in all his elaborate arguments and his competing defences of liberty, he never actually *finally justifies* this point. In effect he gets no closer than Oakeshott in doing so. Now for Oakeshott, as a conservative, this does, at least arguably, not matter. He can defend his position on the basis of just such a set of subjective values: it is ours, we have found much to value in it, and we are prepared to defend it against too radical and rapid innovation. But Hayek cannot have such a defence for two reasons: first he is advocating a universalist system; and second, one of the elements he values most about liberalism is its ability to promote change and progress.

Both Hayek's critique of socialism, and his attempt to establish an unchallengeable basis for a rule-governed liberal order are based on his epistemology and philosophy of mind. As John Gray has noted, Hayek's deepest insight has been to develop the political implications of the limits of human knowledge.¹²⁷ The confusion and contradiction in Hayek's thought begins when he attempts to build upon that foundation an edifice which, for all times and all places, proves that the liberal order is the sole, universal version of the good society to which all people must aspire. This is supererogation on a massive scale. Hayek's case would constitute a valid defence of the liberal order so long as he could establish three points. First, that there are convincing arguments that the liberal order works most effectively when individuals are allowed as much scope as possible to use their own tacit knowledge; second, because we cannot know our own minds or articulate all the knowledge we possess, that any doctrine which requires perfect knowledge and the rationalist reconstruction of social orders is (probably) doomed to failure; and third that sufficient people enjoy the conditions in a liberal order to want to maintain it.

Hayek's thought fulfils the first two criteria. But he does not consider that the liberal order can be defended simply on the basis that people enjoy making choices and seeking their own wants, and that the liberal order offers them such an opportunity. Ironically, it is precisely Hayek's restless conception of progress that undermines such a defence. To go back to Oakeshott's conservative defence of liberty: he notes that 'if the present is arid, offering little or nothing to be used or enjoyed',¹²⁸ then the inclination to preserve existing institutions and social orders will be absent or very weak. The 'restless striving' for progress which Hayek sees as an essential part of the liberal order is bound to damage the foundations of liberty which he has laid so carefully; for such 'restless striving' will undermine the sense of enjoyment people get from existing society, and will also invariably lead to constant criticism and re-evaluation of the traditions on which Hayek insists liberty rests. Hayek has, therefore, failed to provide a satisfactory normative foundation for the liberal order and has undermined a potentially convincing alternative.

To conclude then Hayek claims that his thought is neutral between competing conceptions of the good, and offers a universal justification for the liberal order. It can only be so if his epistemology and psychology can be proved to be empirically true. Hayek does not achieve this goal. However, his epistemology and psychology do offer a potent critique of rationalism in all its forms. It is this critique of rationalism which is incipiently conservative. Where Hayek's thought is unconvincing, is the point where he tries to bridge an unbridgeable gap between his anti-rationalist epistemology and psychology, and his rationalist attempt to provide universal justifications for the liberal order.

¹ See F. A. Hayek, *Law, Legislation and Liberty*, Vol. I, Chapter 1.

² John Stuart Mill, *A System of Logic*, Book VI, Chapter 12.

³ See for example, John Gray, 'Hayek as a Conservative', in his *Post-Liberalism* (Routledge, London, 1993), pp32-39. Hayek himself, whilst recognising the similarities to conservatism in certain elements of his thought, was concerned to deny that he might be a conservative, see especially the postscript, entitled 'Why I am not a Conservative' to *The Constitution of Liberty* (Routledge & Kegan Paul, London, 1960), pp397-414.

⁴ F. A. Hayek, *The Road to Serfdom* (Routledge, London, 1944); and *The Fatal Conceit: The Errors of Socialism* (Routledge & Kegan Paul, London, 1988).

⁵ Andrew Gamble, *Hayek: The Iron Cage of Liberty* (Polity, Cambridge, 1996) pp1-2.

⁶ To claim that Hayek uses empirical justifications for his defence of liberty is not to claim that he is in the empiricist tradition; rather he makes a series of claims for the benefits of liberty which can be tested empirically. See in particular F. A. Hayek, *The Constitution of Liberty*, p41, 48, & 259. Other writers have also seen Hayek in this light, for example, Gamble, cited above and Jeremy Shearmur, *Hayek and After: Hayekian Liberalism as a Research Programme* (Routledge, London 1996).

⁷ Michael Oakshott, 'The Claims of Politics', *Scrutiny* 8 (1939-1940), pp146-51.

⁸ I am grateful to my Open University supervisor, Ms. Susan Khin Zaw, for making this point.

⁹ John Locke *Two Treatises of Government* (Mentor, London 1963), II, Chapter 9, p395.

¹⁰ See F. A. Hayek, *The Constitution of Liberty*, pp149-52.

¹¹ Oakshott uses the term 'substantive' to apply to the difference between 'civil association', that is association without substantive purposes, and 'enterprise association', that is association in terms of a common goal or objective. In *On Human Conduct* (Clarendon Press, Oxford, 1975), Oakshott describes 'enterprise association' as a 'relationship in terms of the pursuit of some common purpose, some substantive condition of things to be jointly procured, or some common interest to be continuously satisfied.' p114.

¹² F. A. Hayek, *The Constitution of Liberty*, p11.

¹³ *ibid.* note 3, p421.

¹⁴ See for example, Ronald Hamowy, 'Law and the Liberal Society: F.A. Hayek's *Constitution of Liberty*', *Journal of Libertarian Studies*, 2 (1978), pp287-97.

¹⁵ F.A. Hayek, *Law, Legislation and Liberty Vol. 1 Rules and Order*, pp36&37.

¹⁶ *ibid.* p43.

¹⁷ *ibid.* p44.

¹⁸ F.A. Hayek, *Studies in Philosophy, Politics and Economics* (Routledge & Kegan Paul, London, 1967), p92.

¹⁹ *ibid.*

²⁰ F.A. Hayek, *Law, Legislation and Liberty Vol. 1 Rules and Order*, p36.

²¹ *ibid.* p46.

²² *ibid.* p47.

²³ *ibid.* p43, & pp55-6.

²⁴ *ibid.*

²⁵ *ibid.* p20.

²⁶ *ibid.* p38.

²⁷ *ibid.* pp36-7.

²⁸ *ibid.* p38.

²⁹ *ibid.*

³⁰ *ibid.* p37.

³¹ See *ibid.* Chapter 2.

³² *ibid.* pp36-8.

³³ *ibid.* p48-9.

³⁴ *ibid.* p41.

³⁵ *ibid.* p46.

³⁶ *ibid.* p39.

³⁷ *ibid.* p51.

³⁸ *ibid.* emphasis added.

³⁹ F.A. Hayek, *The Sensory Order* (University of Chicago Press, Chicago, 1952).

⁴⁰ *ibid.*

⁴¹ Hayek also makes this point in *The Fatal Conceit: The Errors of Socialism*, pp22-3.

⁴² F.A. Hayek, *The Sensory Order* p53.

⁴³ *ibid.* p48.

⁴⁴ *ibid.* pp112-118.

⁴⁵ *ibid.* pp114.

⁴⁶ See, for example, 'The Confusion of Language in Political Thought', Chapter 6 of *New Studies in Philosophy, Politics, Economics and the History of Ideas* (Routledge & Kegan Paul, London, 1978).

⁴⁷ Chandran Kukathas, *Hayek and Modern Liberalism* (Clarendon Press, Oxford, 1990).

⁴⁸ *ibid.* p45.

⁴⁹ F.A. Hayek, *The Sensory Order* p119.

⁵⁰ *ibid.* p185.

⁵¹ *ibid.*

⁵² *ibid.* p123.

⁵³ See, for example F. A. Hayek, 'The Primacy of the Abstract', p42, Chapter 3 of *New Studies in Philosophy, Politics, Economics and the History of Ideas* and also, *The Fatal Conceit: The Errors of Socialism*, p15.

⁵⁴ F.A. Hayek, *Individualism and the Economic Order* (University of Chicago Press, Chicago, 1948), p91.

⁵⁵ F.A. Hayek, *Knowledge, Evolution and Science* (Routledge & Kegan Paul, London, 1983) p49.

⁵⁶ John Gray, *Hayek on Liberty* Second Edition (Blackwell, Oxford, 1986), pp. 59-61.

⁵⁷ Roland Kley, *Hayek's Social and Political Thought* (Clarendon Press, Oxford, 1994), p211.

- ⁵⁸ F.A. Hayek, *The Constitution of Liberty*, p41.
- ⁵⁹ Chandran Kukathas, *Hayek and Modern Liberalism*, p197.
- ⁶⁰ Hayek, *Law, Legislation and Liberty, Vol. I Rules and Order*, p14.
- ⁶¹ Chandran Kukathas, *Hayek and Modern Liberalism*, p197.
- ⁶² *ibid.* p198.
- ⁶³ Michael Oakeshott, 'On being Conservative', in *Rationalism in Politics and other Essays*, p169.
- ⁶⁴ Hayek, *The Constitution of Liberty*, p40.
- ⁶⁵ Michael Oakeshott, 'On being Conservative' in *Rationalism in Politics and other Essays*, p169
- ⁶⁶ *ibid.*
- ⁶⁷ Edmund Burke, *Reflections on the Revolution in France* (Penguin, Harmondsworth, 1982), p152. Burke also offers a striking parallel with Hayek when he discusses the limits of human reason. See *ibid.* p183.
- ⁶⁸ Irving Kristol, 'Utopianism, Ancient and Modern', in his *Two Cheers for Capitalism* (Basic Books, New York, 1978), p185.
- ⁶⁹ By 'subjective' I don't mean a necessarily individualistic subjectivism: rather I use it simply in contrast to an 'objective' view, namely one which is capable of disinterested justification.
- ⁷⁰ Edmund Burke, *Reflections on the Revolution in France*, p89-90. This point also raises interesting parallels between conservatism and post modernism which are beyond the remit of this thesis.
- ⁷¹ *ibid.* p90.
- ⁷² *ibid.* p183.
- ⁷³ Oakeshott, *Rationalism in Politics*, pp7-11 Note particularly the following:
... every human activity whatsoever, involves knowledge. And universally, this knowledge is of two sorts, both of which are always involved in any actual activity.... The first sort of knowledge I will call technical knowledge or knowledge of technique... In many activities this technical knowledge is formulated into rules which are, or may be, deliberately learned, remembered, and, as we say, put into practice; ... its chief characteristic is that it is susceptible of precise formulation. ... The second sort of knowledge I will call practical, because it exists only in use, is not reflective and (unlike technique) cannot be formulated in rules. This does not mean, however, it is an esoteric sort of knowledge. It means only that the method by which it may be shared and becomes common knowledge is not the method of formulated doctrine. - pp7-8.
- ⁷⁴ Michael Oakeshott, *On Human Conduct*, pp38-40, pp41-46.
- ⁷⁵ *ibid.* p54.
- ⁷⁶ *ibid.* pp127-30.
- ⁷⁷ *ibid.* p 132.
- ⁷⁸ *ibid.* p 59.
- ⁷⁹ *ibid.* pp200-1.
- ⁸⁰ Michael Oakeshott 'The Masses in Representative Democracy', in A Hunold (ed) *Freedom and Serfdom: An Anthology of Western Thought*, pp156-7.
- ⁸¹ Michael Oakeshott, 'On being Conservative', in *Rationalism in Politics and other Essays*, p168.
- ⁸² Oakeshott 'The Masses in Representative Democracy', in A Hunold (ed) *Freedom and Serfdom: An Anthology of Western Thought*.
- ⁸³ *ibid.* p157.
- ⁸⁴ *ibid.*
- ⁸⁵ See Michael Oakeshott, *Morality and Politics in Modern Europe*, chapter 6, especially pp84-5.
- ⁸⁶ *ibid.* pp155-6.
- ⁸⁷ Oakeshott, *Rationalism in Politics*, pp21-2.
- ⁸⁸ Oakeshott, 'Talking Politics', *The National Review* 27 (Dec 5, 1975), pp1426-27.
- ⁸⁹ See previous footnote; and Paul Franco, *The Political Philosophy of Michael Oakeshott* (Yale University Press, New Haven, 1990) p231.
- ⁹⁰ Hayek, *The Constitution of Liberty*, p45 & 48.
- ⁹¹ *ibid.* p40.
- ⁹² *ibid.* p41.
- ⁹³ *ibid.* pp397-415.
- ⁹⁴ Oakeshott, *Rationalism in Politics*, p21-2.
- ⁹⁵ Hayek, *The Constitution of Liberty*, p411.
- ⁹⁶ *ibid.* p398.
- ⁹⁷ John Gray, *Hayek on Liberty*, and Chandran Kukathas, *Hayek and Modern Liberalism*.
- ⁹⁸ Gray, *ibid.* p4.
- ⁹⁹ *ibid.* p8, cf. Kukathas, *Hayek and Modern Liberalism*, chapter 5.
- ¹⁰⁰ F. A. Hayek 'The Primacy of the Abstract' in *New Studies in Philosophy, Politics, Economics and the History of Ideas*, p45 footnote 14.
- ¹⁰¹ Hayek, *The Fatal Conceit*, p8. Hayek also offers a Kantian approach in *The Sensory Order*, where he disavows any concern for 'how things really are in the world', affirming that '....a question like 'what is X?' has meaning only within a given order, and within ... this limit it must also refer to the relation of one particular event to other events belonging to the same order'. - pp4-5.
- ¹⁰² Immanuel Kant, *Critique of Pure Reason* (London Macmillan 1929), p795.
- ¹⁰³ Hayek, *Law, Legislation and Liberty Vol. I Rules and Order*, p11.
- ¹⁰⁴ Hayek, *The Constitution of Liberty*, p79.

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- ¹⁰⁵ Howard Williams, *Kant's Political Philosophy* (Blackwell, Oxford, 1983) p52.
- ¹⁰⁶ Immanuel Kant, *Groundwork of the Metaphysic of Morals*, trans. H.J. Paton (Harper and Row, New York, 1964), p120.
- ¹⁰⁷ Howard Williams, *Kant's Political Philosophy*, pp53-4.
- ¹⁰⁸ Chandran Kukathas, *Hayek and Modern Liberalism*, p168.
- ¹⁰⁹ F.A. Hayek, *Law, Legislation and Liberty Vol. II The Mirage of Social Justice*, p28.
- ¹¹⁰ *ibid.*
- ¹¹¹ Chandran Kukathas, *Hayek and Modern Liberalism*, p169.
- ¹¹² *ibid.* p169.
- ¹¹³ Immanuel Kant, 'The Metaphysics of Morals' in Hans Reiss (ed), *Kant's Political Thought* (Cambridge University Press, Cambridge, 1977), p133.
- ¹¹⁴ *ibid.*
- ¹¹⁵ Gray, *Hayek on Liberty*, p7.
- ¹¹⁶ F.A. Hayek, *Law, Legislation and Liberty Vol. II The Mirage of Social Justice*, p24.
- ¹¹⁷ *ibid.* p25.
- ¹¹⁸ *ibid.* p70.
- ¹¹⁹ *ibid.* p70-71, emphasis added.
- ¹²⁰ Hayek, *The Constitution of Liberty*, p68.
- ¹²¹ John Rawls, *A Theory of Justice*, p22-33.
- ¹²² F.A. Hayek, *Knowledge, Evolution and Science*, p49.
- ¹²³ Hayek, *The Constitution of Liberty*, p48.
- ¹²⁴ See, for example, Hayek, 'Individualism: True and False' in *Individualism and the Economic Order*, pp1-32.
- ¹²⁵ *ibid.* p259.
- ¹²⁶ Tibor Machan, 'Individualism v. Classical Liberal Political Economy', *Res Publica* Vol. I, no. 1 1995, pp3-23, p7.
- ¹²⁷ John Gray, *Post-Liberalism*, p35.
- ¹²⁸ Michael Oakshott, 'On being Conservative', in *Rationalism in Politics and other Essays*, p169.

Chapter 5

Conclusion

In the late 1980s and early 1990s, the decline and eventual collapse of communism, or actually existing socialism, was believed by many to confirm the ultimate triumph of liberalism. In 1989 Francis Fukuyama wrote:

[W]hat we may be witnessing is not just the end of the cold war, or the passing of a particular period of post-war history, but the end of history as such: that is the end point of mankind's ideological evolution and the universalization of Western liberal democracy as the final form of human government.¹

Fukuyama's belief appeared to be vindicated by the rapid collapse of communist regimes later the same year. Between June 4th 1989, the date of the first limited multi-party election in Poland, and the execution of the Ceausescus in Romania on Christmas Day 1989, single-party communist regimes fell in Poland, Hungary, the former East Germany, the former Czechoslovakia, Bulgaria and Romania. The one unifying element that could be discerned in the programmes of the revolutionaries, who ranged across the political spectrum from trotskyists and reform communists to reactionary Catholics and extreme nationalists, was that the old system of a planned economy and a one-party state had failed. What was needed was competition in the political sphere, through the medium of political pluralism, and a liberal democratic system, underpinned by a competitive economic free market system.

During the 'velvet revolution' in Czechoslovakia, Civic Forum (the leading revolutionary grouping in the Czech lands) was able to achieve a high degree of consensus on a document entitled, 'What we Want; The Programme and Principles of Civic Forum'.² This document, describing hopes for a post-revolutionary Czechoslovakia, listed conditions that are usually

regarded as liberal staples. With respect to the rule of law it stated that:

[T]he exercise of civil freedoms will be reliably ensured by a developed system of legal guarantees. The independent judiciary will also include constitutional and administrative courts.³

The new political system must

... remake or renew democratic institutions and mechanisms that make possible the real participation of all citizens in the administration of public affairs. ... All existing and newly emerging political parties and other social and political associations must therefore have equal conditions for participation in free elections at all levels of government.⁴

Civic Forum also wished to abandon 'the previous system of economic management' and 'create a market undeformed by bureaucratic intervention'. However, a commitment to social justice was retained:

Czechoslovakia must become a socially just society in which the people receive help in old age, in sickness, and in times of hardship. However, a growing national economy is the essential pre-requisite for such a society.⁵

Despite the genuflection toward social justice contained in the document, this is clearly the blueprint for a liberal state complete with a market economy. It is far removed from the 1968 vision of 'socialism with a human face' or even the 'third way' between socialism and capitalism. Timothy Garton Ash commented at the time:

... the truly remarkable thing is not the differences about the programme, but the degree of almost instant consensus.... This is a Czech phenomenon. But it is not just a Czech phenomenon, for in a different way it is repeated all over East Central Europe. Take a more or less representative sample of politically aware persons. Stir under pressure for two days. And what do you get? The same fundamental Western European model: parliamentary democracy, the rule of law, market economy. And if you made the same experiment in Warsaw or Budapest I wager you would get the same basic result. This is no Third Way. It is not 'socialism with a human face'. It is the idea of 'normality' that seems to be sweeping triumphantly across the world.⁶

However, since the apparent triumphs of 1989 and 1990, there has been a shift. Although the pluralist political systems and market reforms have largely survived, at least in Central Europe, liberal values have been challenged by both an electoral resurgence of socialist

parties, if not socialist systems in central Europe; and the slide toward nationalist dictatorship and clericalism in the eastern and southern areas of post-communist Europe.

Though much of this reversal is no doubt due to the economic difficulties of transition, nonetheless, if liberalism cannot establish itself successfully throughout post-communist Europe - where it was not only replacing discredited and repressive regimes, but was also in close proximity to stable established and successful liberal democratic regimes - then the prospects for liberal success elsewhere in the world, particularly where anti-liberal sentiments are entrenched, must be questionable. One source of the current practical difficulties facing liberalism could, indeed, be its current theoretical problems, one of which has been examined in this thesis. It is at least possible that the absence of liberal *traditions* in some parts of Central and Eastern Europe has contributed to the comparative lack of success in the new democracies. It is also at least possible that this explains the comparative success of liberal regimes in states like the Czech Republic, Hungary and Poland: that is in those states which, in the case of the Czech Republic and Hungary, had, through the Austro-Hungarian Empire, at least some exposure to liberal, Enlightenment and proto-liberal traditions; and in the case of Poland was linked to the post-revolutionary French tradition, first through the Polish Lancer regiments in Napoleon's *Grande Armée*, and later through the Polish émigré community in France. Where, then, does this leave contemporary liberalism?

I - Liberalism's neutrality: the evolution of an illusion

Liberalism's theoretical problems have developed because liberal theorists have been unable satisfactorily to establish moral and political foundations for liberalism without resorting to the tacit assumptions of liberalism's founders. The tacit moral ideal underlying Hobbes's

thought was the medieval nexus of honour and duty, ideas which Hobbes retained from his Aristotelian roots.⁷ Locke, as a Calvinist,⁸ could base his moral ideal on divine law. Liberalism flourished, that is to say, because it rested on a series of tacit assumptions and values drawn from a well-established intellectual tradition in a specific geographical area.⁹ The liberal quest for universalism, instead of enabling liberalism to transcend its original geographical and cultural boundaries, has had two quite different consequences. First, it has led to a developing theoretical inconsistency within liberalism; and second – but related to the first – it has led to the development of discrete and disparate liberal traditions.

The practical failures of liberalism in dealing with the worst aspects of industrial capitalism led to the emergence of the social liberals, influenced by Idealism, such as Green and Hobhouse.¹⁰ The liberal drive for universalism - in societies increasingly characterised by moral pluralism - led to the formulation of liberal theories by thinkers such as Weber, whose emphasis was on the development of institutions and procedures which could accommodate incommensurable ethical divisions. The result has been that liberalism today is not so much a single mode of thought but three distinct, though intertwined, traditions. First, a tradition fundamentally informed by empiricist epistemology and ethics, and thus eschewing any substantive notion of the good, a theory represented today by deontological liberals such as Rawls and Nozick; second, a multi-faceted set of views whose common theme is the stressing of liberal political values, regardless of philosophical meta-differences - for example Bellamy and predecessors such as Weber; and third, social liberalism, originally formulated by thinkers like Green and Hobhouse, and which has historical and conceptual links with the contemporary communitarian-tinged attitudes of thinkers like Rorty, Walzer and Taylor, who accept, rather than advocate, liberal politics.

What links these varieties of liberalism is a set of political values rather than philosophical

positions. This explains how positions as different as, for example, Mill's and Hobhouse's, are nonetheless liberal positions; and how it is that many communitarians accept liberal political - and some moral - values, despite their philosophical objections to the empiricist epistemology informing much, if not all, Anglo-American liberalism. I have argued that these values (whose putative epistemological roots the communitarians are right to criticise as inadequate) require to be rooted in a notion of the good; and that the only such notion available is a conservative one.

Liberalism's orthodox history declares that it emerged as a wholly new creature in 16th and 17th century Europe. More significantly, liberalism was deemed to be a liberating force from the darkness of tradition and superstition. The point is made trenchantly by Kenneth Minogue: '[T]he story of liberalism as liberals tell it, is rather like the legend of St George and the dragon. After many centuries of hopelessness and superstition, St George in the guise of Rationality appeared in the world somewhere about the sixteenth century.'¹¹ Liberalism, emerging in response to new developments in science and ethics, was formulated principally by the English writers Hobbes and Locke, but also through the ideas of other writers and movements involved in the debates surrounding the English Civil War: as John Gray puts it, 'Thomas Hobbes ... gives voice to an intransigent individualism whose consummate modernity marks a decisive breach with the social philosophy bequeathed by Plato and Aristotle to medieval Christendom.'¹²

But this orthodox history is misleading. Although individuality first appeared as a relatively coherent body of ideas in the 17th century, it developed from, and was dependent upon, the assumptions inherent in the older intellectual traditions of medieval Christendom such as honour, honesty and loyalty to the state or ruler in some form.¹³ However, the philosophical development of individuality is indeed the foundation of liberalism. According to Parekh, it

'abstracts the person from all his or her 'contingent' and 'external' relations with other people and nature, and defines the person as an essentially self-contained and solitary being encapsulated in, and unambiguously marked off from the outside world by his or her body.'¹⁴ The 'austere minimalism'¹⁵ of this conception of individualism leads each person to define themselves in terms of their separateness from others: each person is defined not as a member of a community, nor as a participant in political society, nor even in terms of a profession or vocation; but as an entity bounded by the naked human body.¹⁶

Atomism and empiricism in morality and politics, on which this conception was based, emerged from the success of the scientific method developed in 17th century Europe. Just as 17th century physics saw matter as being made up of small atoms, so Hobbes took an atomistic view of human society. Society could be explained only by understanding its component parts, that is individuals. Individuals could, and indeed should, be understood as being anterior to society.¹⁷ The nature of politics and morality can be understood only if we already understand the discrete individual units who comprise society. Such a view makes problematic both human sociability and shared human values, however. Sociability and shared human values become things to be justified so that answers must be provided to questions such as: Why are we sociable? Why do we apparently share many common beliefs and prejudices?

The answer that the first exponent of individualism presented to account for this dilemma was self-interest. What Hobbes believed he was doing was presenting a mechanistic science of politics to match Newton's mechanistic account of the universe. To achieve this, Hobbes had to argue that human beings were like atoms in motion, repelled by certain sensations and attracted by others. The one common fear that repelled all individuals was fear of violent death. By focusing on what he perceived as this universal element in human nature,

Hobbes thought he was providing a universally applicable method which would place the foundations of government on a scientific footing. However, this is not what Hobbes achieved. The individual selves who contracted together to create Leviathan were clearly abstractions from 17th century English society. They entered civil society and agreed to obey a sovereign because they feared that the perils of violent death that lurked in a country riven by Civil War would spiral further out of control. Within the state, the individual selves who threatened each other could be controlled, and once the state was created, fear of return to the state of nature, and with it the risk of violent death, encouraged individuals not to challenge sovereign authority or break the law.¹⁸ However, the question then arises why individuals should keep their covenants. Why should people not trade on the gullibility of others by making but then breaking covenants? Hobbes places this objection in the mouth of a 'fool' who would say that

... there is no such thing as justice;...that every man's conservation and contentment, being committed to his own, there could be no reason, why every man might not do what he thought conduced thereunto: and therefore able to make, or not to make; keep or not keep covenants was not against reason, when it conduced to one's benefit.¹⁹

For Hobbes, the fool's reasoning is specious. The state exists to secure obedience to covenants. He points out that no one who breaks covenants can be received into society, except by error,²⁰ and he holds that no one can count on that error being made. Thrasymachus's question, though, remains; what if some person or some group of people could get away with it?

On the face of it, the conclusion that this made the breaking of an agreement justifiable was a difficult one for Hobbes to avoid. Hobbesian society could exist only by virtue of the vigilance of the law and the agents of the sovereign: it could not depend on the loyalty or trustworthiness of its citizens. Why did Hobbes not address this question more explicitly? The answer is that Hobbes, despite his protestations to the contrary, was not beginning his

philosophy with a blank sheet of paper after all. In his early years he had been an Aristotelian (even included within *Leviathan* there is a view of natural morality and honour). Moreover, although Hobbes initially links honour with power, '[T]o pray to another, for aid of any kind, is *to* HONOUR; because a sign we have an opinion he has power to help; and the more difficult the aid is, the more is the honour';²¹ however, later Hobbes states when discussing what is or is not honourable that '*Honourable* is whatsoever possession, action, or **quality** is an argument and sign of power.'²² So although Hobbes attempts to provide a justification for human behaviour based on a social version of the laws of motion, he includes within it the idea that certain qualities are of themselves honourable.

The problem of finding a stronger foundation for sociability and obedience to a moral code beyond self-interest was addressed both by the empiricist philosophers, Locke, Berkeley, and Hume, and later by the utilitarians. Empiricism holds that all knowledge of fact, as distinct from that of purely logical relations between concepts, has its source in experience, maintaining that all human knowledge comes from experience and that only experience can provide it with ideas, including moral ideas. Each mind must have unique experiences. No two people, not even twins, can possibly have absolutely identical experiences. However, as with Hobbes, the later figures of the liberal tradition thought that everyone could agree on the desirability of pleasure and the need to avoid pain. Yet there appears to be a contradiction between the empiricism present in Locke's *Essay Concerning Human Understanding* and the political theory presented in the *Two Treatises*. In the *Two Treatises*, Locke argued that there was a universal moral law accessible to all human beings. As the property of God, individuals had duties to their maker beyond the pursuit of pleasure and the avoidance of pain. God had made individuals free and rational so that they could order their activities in a way which would allow them to discharge their duty to God. Attempts have been made to find alternative secular, universal, foundations for liberalism in terms of

enlightened self-interest, psychology or human nature. Empiricist epistemology and ethics have informed all these attempts and they all face two problems.²³ First, they cannot find adequate criteria for evaluating the moral worth of the choices individuals make, other than - in some cases - duty to God; and second, they cannot decide whether individuals are choosing beings because of capacities they inherently possess, or because of the capacities they have the potential to possess.

Without the underpinning of divine law, the freedom of choice of the individual degenerates into moral subjectivism; the belief that what is right or wrong, good or bad, is simply a matter of personal preference or appetite. But in that case, this subjectivism must apply also to liberal principles and not least to that of the over-riding value of liberty. The point – and it is a fundamental one – is that there is no moral reason why people should choose a liberal political order before a fundamentalist Islamic theocracy, for example, with all the likely repression of liberal values that such a state would entail.²⁴

These historical and conceptual problems are the foundation of the current debates within liberalism. They are present because liberal theory fails to provide satisfactory answers to the question of how and why human beings are capable of making, and why they have a natural right to make, their own moral choices. Charles Taylor sums up the difficulty thus:

[T]o ascribe the natural (not just legal right) right of X to agent A is to affirm that A commands our respect, such that we are normally bound not to interfere with A's doing or enjoying of X. This means that to ascribe the right is far more than simply to issue the injunction: don't interfere with A's doing or enjoying X. The injunction can be issued, to self or others, without grounds should we so choose. But to affirm the right is to say that a creature such as A lays a moral claim on us not to interfere. It thus also asserts something about A: A is such that this injunction is somehow inescapable.²⁵

To affirm a natural right, Taylor notes, is to say both that A lays a moral claim on us not to be interfered with; and that doing or enjoying X is part of manifesting some essential human

quality. But what does affirming a natural right entail? If that essential human quality is rationality, then A must not only have a natural right to X but also to the unimpeded development of rationality. If the essential human quality is autonomy, then A must have a right to the necessary conditions that allow personal autonomy, such as access to material resources. So even asserting that a natural right exists requires a conceptual background, in that it must include some idea of the worth of certain properties or capacities, without which they would not make sense:

... our position would be incomprehensible and incoherent if we ascribed rights to human beings in respect of the specifically human capacities... while at the same time denying that these capacities ought to be developed, or if we thought it a matter of indifference whether they were realised or stifled in ourselves and others.²⁶

The reason why natural rights are ascribed to human beings, and not to other species or objects, is that human beings can be defined as creatures with, at least, the potential for rationality and autonomy, a potential that is sensed so strongly that it cannot be lost. Could this mean that human beings possess the full capacity of rationality and autonomy as a given capacity, rather than as a potential capacity that has to be developed? Liberal neutrality rests on the former assumption, that human beings possess the full capacity of rationality as a given.

If individuals are recognised as choosing beings because of the capacities they inherently possess, then it could be assumed that they will develop into rational beings whatever their condition and whatever their upbringing. But, this is nonsense. Even fictional characters like Mowgli or Tarzan required a notional society, that of wolves or apes which resembled hierarchical human societies, to allow them to develop some rationality. It is difficult to conceive of the development of any capacity regarded as human, whether it be language, rationality or sentiment, outside of some kind of society. We can develop language only by communicating with others; rationality is something that is taught and developed; and

individuals could hardly develop the full range of human emotions if they were kept isolated from their fellows.

Rationality is especially significant in this context. It forms the basis of the idea of an individual as a chooser pursuing self-set aims. In order to show that the liberal individual requires a social context to develop their rationality let me briefly consider the possibility of establishing rationality outside human society. Assuming that an individual could be given physical nourishment without human contact, what could be the choices the individual could pursue? Whether to sleep, or whether to remain awake; whether to eat the food when presented, or save it for later: to take exercise, or not to take exercise? These are unquestionably choices, but they are hardly the rational choices that liberal individuals would need to make in order to develop their individuality. Natural rights to choose can be ascribed to human beings only by asserting the worth of those human capacities which can be developed only within society. The normative consequence of this is that these uniquely human capacities to make rational and moral choices ought to be encouraged and developed in all individuals. Furthermore, the liberal individual - the individual who recognises him- or herself as a rational choosing being - is far from being 'natural', the historical product of precisely those cultures and traditions where the liberal tradition of thought originated.

Rationally choosing individuals are products of society; liberal individuals are not extra- or trans-cultural phenomena. The liberal individual is not representative of every human being but of a particular type of human being. The point is that if the liberal individual is to be valued, then the society that nurtures that liberal individual ought to be preserved; and so liberalism, as a matter of fact, depends on the preservation of the traditional societies which gave rise to the individualism which liberalism theorises. But is this not a recognisably conservative story, little - if at all - different from that outlined by Oakeshott? A brief return

to John Stuart Mill demonstrates this point. Mill is the crucial figure in the liberal pantheon, yet his position is fundamentally ambiguous: his thought demonstrates the tension between classical atomistic liberalism and emerging social liberalism. The main thrust of Mill's argument is fundamentally individualistic, and he makes it clear that the object of *On Liberty* is to delineate the area in which individuals cannot be coerced and to argue that the only justification for coercing individuals against their will is the prevention of harm to others. Nonetheless, Mill recognises that some individuals will undertake foolish or reckless acts and that other individuals or groups are entitled to use persuasion or remonstrance to induce them to cease or to avoid such acts but they are not entitled to compel them to desist:²⁷ '[T]he only freedom which deserves the name is that of pursuing our own good in our own way, so long as we do not attempt to deprive others of theirs or impede their efforts to obtain it. Each is the proper guardian of his own health, whether bodily, or mental and spiritual.'²⁸ Yet - and this is all too often either overlooked, or under-emphasized - Mill introduces a caveat: '[T]hat the only purpose for which power can be rightfully exercised over any member of a *civilised* community, against their will is to prevent harm to others.'²⁹ What Mill turns out to be saying, then, is that it is a *certain sort of human being* who must not be interfered with. The implication is that there are communities where liberty can and should be infringed upon, a point he makes explicit later in the same work when he asserts that despotism is an appropriate mode of government for 'barbarians'.³⁰

Mill is here taking an historical view of liberalism: individuals who can benefit from liberty are the products of certain times and circumstances; liberty is valuable only when people are capable of improving themselves. However, while Mill recognises the historical nature of political liberties, he misses - as we have seen - the historical nature of the liberal individual, who is the subject of that liberalism. Thus Mill's thought reveals the central paradox in liberalism and the central theme of my argument: that liberal individuality is an historical

artefact, and to maintain it a certain type of society must be established.

It is a paradox that is further demonstrated by Mill's view on state intervention. Mill does not want to extend the scope of political authority without due cause, preferring to rely instead on voluntary action. Intervention is undesirable for several reasons: it involves the use of compulsory powers and so restricts the freedom of choice of individuals affected; it always involves taxation, the imposition of which offends the fundamental tenet that each person is to be rewarded according to his or her own efforts; it increases the power and influence of government; public pressure may entail the tyranny of the majority; government offices are often inefficient and their work frequently defective and badly organised as compared with private agencies; and it inhibits the habit of voluntary action by groups of individuals.³¹ However, in the detailed discussion of these points in the *Considerations on Representative Government*, Mill concedes the need for a formidable agenda of public activity. He accepts the role of government traditionally espoused by classical liberals; defence and the maintenance of internal order; the establishment of a system of courts; the enforcement of contract and the prevention of fraud; the administration of the land as a vital, limited resource; and the control of inheritance and bequest. At the same time, however, he also gives some aspects of these matters a rather wider scope: he accepts that the law might regulate contracts involving unfavourable terms for one of the parties, for example; and moving even further from the norms of classical liberalism, he urges that, in the case of people who cannot effectively care for themselves, the *laissez-faire* principle breaks down, and government must assume responsibility.

Mill's departure from classical liberal norms was taken up by L.T. Hobhouse and T.H. Green, whose version of liberalism saw a shift in attitude toward freedom and the role of the state. While Mill's theory supports state action in support of individual self-realisation only

tacitly, such a vision is explicit in the thought of Hobhouse and Green. However, in these cases the justification of state action remains the ultimate well-being of individuals. Green was a Hegelian, according to whom, freedom was not confined to the security of life and property; it included a capacity to fulfil human potential. The liberal right to equal liberty could be achieved only when every citizen had the opportunity to lead a worthwhile life as a rational, choosing individual. The task of government was to maintain the conditions without which free exercise of human faculties was impossible. Like contemporary communitarians, he recognises that it is the potential to be rational that confers an entitlement to be treated as a rational being, and with that comes the *normative* claim that conditions should be created which will allow individuals to achieve their potential as rational beings. In this way Green builds on Mill's conception of 'character' and is a forerunner of Raz's perfectionism.

Hobhouse was also in favour of more extensive government intervention. Its objective was to provide a bedrock of material comfort below which none could fall into abject poverty. The effect, Hobhouse believes, would be to enhance individual liberty, because every citizen would be able to enjoy autonomy. The aim was to guarantee the self-directing power of personality. Hobhouse recognises the ambiguity in liberalism, that it was concerned with autonomy, but that worthwhile autonomy for all could be achieved only if certain social conditions were established: hence his belief that government action is necessary to promote individual self-development.³² However, he too fails to recognise the source of this ambiguity, namely that the liberal individual is an historical construct. Indeed Hobhouse's and Green's partial disavowal of the classical liberalism represented by Mill may be read as an earlier version of the communitarian/deontological liberal debate. With their emphasis on the state's role in removing obstacles to self-improvement, and their idea that individuality is a quality that must be nurtured rather than something which occurs naturally, 'new'

liberals like Hobhouse and Green foreshadow contemporary communitarian liberals like Taylor. Like the communitarians, they also adhere to liberal political and moral values, but they recognise that particular conditions are necessary for the preservation of these values.

As Hobhouse argues:

... the life of the individual would be something utterly different if he could be separated from society. A great deal of him would not exist at all ... his mental and moral being would, if it existed at all, be something quite different from anything that we know. By language, by training, by simply living with others, each of us absorbs into his system the social atmosphere that surrounds us. In particular in the matter of rights and duties which is cardinal for liberal theory, the relation of the individual to the community is everything.³³

Furthermore, it is the potential of all humans to become rational beings that Hobhouse sees as the foundation of liberty:

[I]t [liberty] rests not on the claim of A to be let alone by B, but on the duty of B to treat A as a rational being. It is not right to let crime alone, or to let error alone, but it is imperative to treat the criminal or the mistaken or the ignorant as beings capable of right and truth, and to lead them on instead of merely beating them down.³⁴

This bears a strong resemblance to the views of Charles Taylor cited earlier in the chapter,³⁵ and it demonstrates the continuity of the debate in liberalism between those who attempt to found liberalism on the metaphysical idea of the unencumbered self; and those like Hobhouse and Taylor who argue that individuality was a product of social conditions. What they both have in common, furthermore, is that they both fail to recognise the implication of this argument for the nature of liberalism. They fail to see that if it is the historical context that produces the conditions for the development of the rational liberal individual, then what we have here in terms of the *justification* of the theory is a fundamentally conservative position. This point is well illustrated by comparing two similar passages, one from a communitarian, and the other from a conservative, theorist:

[H]ow could successive generations discover what it is to be an autonomous agent, to have one's own way of feeling, of acting, of expression, which cannot be simply derived from authoritative models? This is an identity, a way of understanding themselves, which men are not born with. They have to acquire it. And they do not in

every society: nor do they all successfully come to terms with it in ours. But how can they acquire it unless it is implicit in at least some of their common practices, in the ways that they recognise and treat each other in their common life... or in the manner in which they deliberate or address each other, or engage in economic exchange, or in some mode of public recognition of individuality and the worth of autonomy.³⁶

Human individuality is an historical emergence...In modern Europe this emergence was gradual, and the specific character of the individual who emerged was determined by the character of his generation...This experience of individuality provoked a disposition to explore its own intimations, to place the highest value upon it, and to seek security in its enjoyment. To enjoy it came to be recognised as the main ingredient of 'happiness'. The experience was magnified into an ethical theory; it was reflected in manners of governing and being governed, in newly acquired rights and duties and in a whole pattern of living.³⁷

Both these theorists see individuality as a product of history. Both see it as part of a whole pattern of life. Most telling of all, neither offers explicit reasons why the idea of a rational individual making moral choices should be regarded as being inherently more worthy than, say, the Aristotelian ideal of the person as an integral part of nature and society, or the Hindu belief that the caste into which a person is born is not an accident, but a result of his or her actions in a previous life.

Where do these historical and conceptual comparisons lead? Let me briefly recapitulate. My argument is that liberalism misunderstands its own history, and thus its own theoretical foundations. While the philosophical development of individuality was indeed the foundation of liberalism, this was not a radical departure from the existing tradition of thought, but a development of it; and moreover, liberalism, despite its claims to the contrary, continued - tacitly at least - to adhere to a conservative justification of the good. This has to be the case because the liberal individual, far from being natural, is an historical artefact, a product of time, place, culture and civilisation.

Let me illustrate the point by focussing on the use made by liberals and proto-liberals of the notion of an original contract, an idea devised in the 17th century to show how legitimate

government was based on (implicit) consent, and taken up by, among others Rawls. He claims his principles are neutral inasmuch as he places pre-social individuals behind a 'veil of ignorance' so that they are unaware of the position they will come to occupy in society.³⁸ Once individuals are in this disinterested original position, Rawls asks what constraints on pursuing their own wants it would be rational for them to accept. But while this position may be neutral between individuals who are the 'wanting' beings of liberalism,³⁹ it cannot be neutral between those who recognise themselves as individuals, and those who reject the 'austere minimalism' of that liberal concept of the individual, and who hence do indeed recognise themselves as specific and variously encumbered people - as many critics have pointed out.⁴⁰ Rawls's claim to neutrality therefore fails: his conception of individuality - that very 'austere minimalism' which makes the 'neutrality' of the original position theoretically available - is not a neutral one, but rather reflects the historical and conceptual circumstances that gave it birth.

II - A viable liberalism?

If liberalism's attempts to justify itself have failed, is some other justification possible? Let us begin from the idea that liberalism is in fact the historical product of the political traditions which existed in Britain, parts of Western Europe and North America during the seventeenth and eighteenth centuries. These traditions, conveniently abridged and entitled 'liberalism', were seen to offer modes of government that were less repressive than existing modes, and also to offer better opportunities for the security and fulfilment of intellectually and politically aware classes than in other societies then extant. In societies that adjoined those of Britain, Western Europe and North America, or were transplanted from them, and as a result shared at least some of the traditions from which liberalism emerged, states eventually evolved which could be recognised as operating within the liberal tradition, but

with national and regional variations.

Now, the liberal states and societies which evolved in this way can indeed be seen as less repressive, and more materially successful, than other forms of political organisation, especially in those areas that had political, social and religious traditions closely related to those in the areas where liberalism originated. However, recognising the truth of this statement is not the same as proving, once and for all, that liberalism is the sole model of the optimal political and social arrangement for everyone, everywhere. Nor does such recognition, moreover, lead to the style of liberalism without foundations as advocated by Rorty whose anti-essentialist view of the liberal tradition, although invoking some of the conservative arguments is necessarily fissiparous:⁴¹ he offers no way of uniting the various and competing elements within liberalism. What he offers is not one view of what liberalism is, one that we must accept because it is *Our View*, but rather several competing statements of *Our Liberal View* all of which we must accept (or not) because they are ours. Thus Rorty invokes Oakeshott's notion of conversation to describe political activity, which, like Oakeshott, he sees as a 'conversation not an argument'.⁴² However, given the diversity of the liberal tradition that Rorty holds to be *Our Liberal View* (though, as I have said he fails to recognise it as such), it seems much more likely that it will indeed be an argument, or even just a noise, rather than a conversation. Recognition that the liberal states and societies that emerged in, or were transplanted from, Britain, Western Europe and North America are less repressive and more materially successful than other forms of political organisation, allows a defence of liberal values on the basis of their being part of a holistic tradition of political activity which has developed at specific times and in specific parts of the world. In areas where it has been firmly established, it has been a generally successful tradition in terms of both political stability and material prosperity for most of the population, most of the time. Moreover, people who live in societies governed by the liberal tradition of politics have

found much to enjoy in liberal ways of life. They therefore deem that it is worth retaining, defending where necessary, and indeed, where possible, improving. Nonetheless, members of such societies realise that these arrangements are not perfect, but that they need both to be maintained and to evolve. This raises an important question about the nature of political and social change within liberal societies. As citizens who enjoy the way of life provided by liberal societies, and who recognise that they might lose much by radical change, they tend to favour continuity, but at the same time they understand that as circumstances change so political arrangements must adapt. Therefore, there needs to be some understanding of how change can occur whilst minimising loss and the risk of loss. The only reliable guide in these circumstances is not the political theory of liberalism, which as we have seen is not antecedent to practice, but practice itself - practice, which is, of course, the product of existing traditions of behaviour within liberal states. But such a way of understanding the activity of politics, at least with respect to liberalism, must be restricted to the times and places which have an extant liberal tradition that has been legitimated both by circumstances of comparative prosperity, and the enjoyment of the ways of life facilitated by the establishment of liberal values. Such a defence is stronger than Rorty's 'minimalism': not only does it recognise that liberalism is valuable because it eschews cruelty, but because it offers ways of life which people find congenial and, more importantly, it offers prudential reasons for rejecting policies, practices and ways of life which threaten the well-being of the liberal tradition.

The justification I have briefly adumbrated for the maintenance and retention of liberal values is not, however, itself a *liberal* justification. It cannot be so, because it is based on two factors foundationalist liberals of any type would unequivocally reject: first, the subjective preference that liberal societies are ours and that we value them for that reason alone; and second, because they are ours and we have found much to enjoy in them, we will

defend them against perceived and actual challenges from within and without. In fact this is exactly what the defence of liberalism mounted by communitarian liberals amounts to,⁴³ even though they are not prepared to describe it in this way. Nor of course is that surprising. As liberals committed to liberal justification, no less than political liberalism, they could hardly do so. For to reject liberal justification – in the absence of any other justificatory strategies – is to adopt precisely that sort of justification which a conservative thinker such as Oakeshott espouses:

[T]he political theory of individualism should ... be understood as the elucidation of a view of the office of government appropriate to certain circumstances. And the chief feature of these circumstances is the appearance of subjects who desire to make choices for themselves, who find happiness in doing so and who are frustrated in having choices imposed upon them. In order to begin to think about the manner of governing appropriate in these circumstances we do not need to demonstrate that a disposition of this sort has eternal validity, that it represents the fundamental structure of human nature, or that no other disposition is conceivable; all we need do is to recognise the appearance of such subjects - namely, subjects intent on the enjoyment of individuality - in sufficient numbers to make it appropriate to consider the corresponding office of government. What has to be elucidated is not an eternally valid notion of government, but a notion of government appropriate to subjects of this sort.⁴⁴

For Oakeshott, the problem with many liberal theorists is that they have attempted to do too much. The best liberal writers are those who 'have not lost sight of the fact that what they were doing is no more than exploring a theory of government appropriate to certain historical circumstances'⁴⁵ (even though such recognition ought to preclude their remaining liberals at least as hitherto understood). Complex normative foundations for liberal government are unnecessary. All that is required as a normative justification of liberal values, if not of liberalism as a complete philosophy – a metaphysical philosophy as well as a political philosophy, so to speak - is the recognition of the existence of individuals who recognise themselves as such:

... we require for our starting-place nothing more than the recognition of the existence of subjects of this sort [individuals]. We know well enough that this is an acquired disposition, we know that there have been communities of men from which it has been absent or in which it was relatively insignificant; and we know that such communities may re-emerge. But all this offers no hindrance to the elucidation of the political theory

of individualism. All that could make such a political theory unintelligible would be the demonstration that subjects of this disposition have never existed; and all that could make such a political theory of merely historic interest would be the demonstration that subjects of this sort do not now exist. And neither of these propositions is capable of being convincing or even plausible.⁴⁶

Such a justification of liberal values seems both sensible and coherent. The problem is, however, that no liberal, apart from someone like Rorty who entirely rejects *any* attempt to offer foundations, could accept such a limited defence of the liberal order as a starting point. First, it is based on prejudice in favour of existing institutions and rejects the search for universalist foundations. Second, it also openly recognises that the illiberal groups within liberal states can be tolerated only insofar as they do not transgress the norms laid down by liberal values.⁴⁷ But liberal theorists have never been able to present coherent universal moral foundations for liberal values; and we have seen why the (liberal) quest for liberal foundations must prove futile. Liberalism cannot be sustained on its own basis. Rather, liberalism must be founded on the pre- and proto-liberal traditions which gave birth to its founding texts (such as Locke's *Two Treatises*, Paine's *Rights of Man*, the *Constitution of the United States* and the *Declaration of the Rights of Man and the Citizen*) rather than on the texts themselves: for these were *in fact* abstractions from extant political behaviour and arrangements, and not, their authors' views to the contrary notwithstanding, universal truths accessible to entirely disinterested reason.

Liberalism is the product of certain times and certain places. It is not a universally applicable system of thought based on eternally valid precepts discovered by reason. It is not neutral between competing conceptions of the good; it is at best neutral only between the competing wants of individuals. It is simply something abstracted from the political traditions of the lands that gave it birth. Does this fatally weaken liberalism? I venture to suggest not. Political activity, whether it is in terms of practice or theory, seldom if ever

begins from a blank piece of paper. It is almost always, as Oakeshott puts it a matter of 'attending to the arrangements' of already existing societies.⁴⁸ This is surely what liberal theorists do, however rarely they admit it. But consider, finally, Oakeshott's definition of politics:

[P]olitics is the activity of attending to the general arrangements of a collection of people who, in respect of their common recognition of a manner of attending to its arrangements, compose a single community. To suppose a collection of people without recognized traditions of behaviour, or one which enjoyed arrangements which intimated no direction for change and needed no attention, is to suppose a people incapable of politics. This activity, then springs neither from instant desires, nor from general principles, but from the existing traditions of behaviour themselves. And the form it takes, because it can take no other, is the amendment of existing arrangements by exploring and pursuing what is intimated in them.⁴⁹

Now, if we think back to the concerns examined throughout this thesis we discover that pursuing the intimations of the liberal tradition is exactly what they have been doing. Mill, for example, is concerned to establish the maximum level of freedom so that individuals can pursue a fine character; Hayek attempts to justify liberalism in terms of individualism and material well-being; and Raz seeks to ensure that individuals can make the most of the autonomy enhancing culture in which they live. These attempts are intimated by preoccupations within the liberal tradition. This is the basis of the relationship between liberalism and conservatism. It is only through reversion to conservative ideas of the priority of practice over theory and the defence of existing orders that liberalism can defend its core values. It is only by utilising these arguments, which were developed by conservatives to defend the remnants of the older tradition on which liberalism was founded, that liberal values can ultimately be defended.

¹ Francis Fukuyama, 'The End of History?' in *The National Interest*, Summer 1989, pp3-10, p4.

² Reproduced in Bernard Wheaton & Zdenek Kavan, *The Velvet Revolution* (Westview, Oxford, 1992) Appendix B, pp206-208.

³ *ibid.* p206.

⁴ *ibid.* pp207-7.

⁵ *ibid.* p 207.

⁶ T. Garton Ash, *We the People* (Granta Books, Cambridge, 1990), pp103-5.

⁷ See for example Leo Strauss, *The Political Philosophy of Hobbes* (University of Chicago Press, Chicago, 1984), Chapters 4 & 7.

⁸ John Dunn has argued that Locke's views of morality and responsibility operate within a Calvinist theological world view, John Dunn, *The Political Thought of John Locke* (Cambridge University Press, Cambridge, 1982), chapter 18, pp250-252. Given Locke's famous plea for tolerance it is ironic that the Dunn should argue that the origins of Locke's political thought are Calvinist, however, it should be remembered that Locke's tolerance was extremely limited, and he did of course argue against extending toleration to Catholics and atheists. See John Locke *A Letter Concerning Toleration*, in J.W. Gough (ed) *The Second Treatise of Government and A Letter Concerning Toleration* Third Edition, (Blackwell, Oxford, 1966), pp156-159.

⁹ This point is an important theme in contemporary scholarship. For instance, Adam B. Seligman in *The Idea of Civil Society* (Princeton University Press, Princeton, 1992), points out the pre-Enlightenment origins of the staples of civil society, reason and the individual, whilst in *Whose Justice? Which Rationality?*, Alasdair MacIntyre skilfully disentangles the origins of the liberal tradition (see especially chapter 17). Enquiry into the origins of liberalism has also informed some of the debate surrounding post-modernism, in *The Ennobling of Democracy* (Johns Hopkins University Press, Baltimore, 1992), which offers a critique of post-modernist responses to contemporary political and social problems, Thomas L. Pangle looks to the sources of the liberal tradition to reinvigorate the legacy of classical republicanism.

¹⁰ Continental liberalism underwent a similar transformation. See for example, Richard Bellamy, *Liberalism and Modern Society* (Polity Press, Cambridge, 1992) Chapters 2,3&4.

¹¹ Kenneth Minogue, *The Liberal Mind*, (Methuen, London, 1963) p1.

¹² John Gray, *Liberalism* (Open University Press, Milton Keynes, 1986), p7.

¹³ Ernest Gellner, for example, recognised the way in which Enlightenment rationalism corroded the foundations of stable societies. He notes: 'The Enlightenment ethic of cognition does exclude certain kinds of authority, certain ways of validating a social order, but it simply does not contain any solid, so to speak, meaty, premisses capable of engendering a concrete social alternative'. *Postmodernism, Reason and Religion* (Routledge, London 1992), p88.

¹⁴ Bhikhu Parekh, 'The Cultural Particularity of Liberal Democracy' *Political Studies*, 1992, XL, Special Issue, 160-175, pp160-175, p161.

¹⁵ *ibid.*

¹⁶ See Bob Brecher, *Getting What You Want*, Chapters 3 & 4.

¹⁷ See the Introduction to Thomas Hobbes's *Leviathan* '... by art is created that great LEVIATHAN called a COMMONWEALTH, or STATE, in Latin CIVITAS, which is but an artificial man; though of greater stature and strength than the natural for whose protection and defence it was intended;' - p5.

¹⁸ See C. B. MacPherson, *The Political Theory of Possessive Individualism* (Oxford University Press, Oxford, 1964), pp17-19.

¹⁹ Thomas Hobbes, *Leviathan*, p94.

²⁰ *ibid.* p95.

²¹ *ibid.* pp57-8.

²² *ibid.* p59, emphasis (bold) added.

²³ Liberalism derived directly from Kant is obviously not empiricist in nature, and is beyond the remit of this thesis as it does not claim neutrality in the requisite sense. However, contemporary Kantians such as Rawls, at least in *A Theory of Justice*, both claim neutrality and import empiricist assumptions regarding human wants into their putative deontological liberalism.

²⁴ See for instance Tibor Machan, 'Individualism versus Classical Liberal Political Economy,' *Res Publica*, 1,1, 1995, pp3-23.

²⁵ Charles Taylor, 'Atomism', in S. Avineri and A. de-Shalit (eds), *Communitarianism and Individualism*, p32.

²⁶ *ibid.* p33.

²⁷ John Stuart Mill, *On Liberty*, p68.

²⁸ *ibid.* p72.

²⁹ *ibid.* p68.

³⁰ *ibid.* p69.

³¹ John Stuart Mill, *Considerations on Representative Government* in *Utilitarianism, On Liberty and Considerations on Representative Government*, Chapters 2 & 6.

³² L.T. Hobbhouse, *Liberalism*, Chapters 2 & 6, in Meadowcroft (Ed) Hobbhouse, *Liberalism and Other Writings* (Cambridge University Press, Cambridge, 1994).

³³ L.T. Hobbhouse, *Liberalism* in *Liberalism and Other Writings*, p60.

³⁴ *ibid.* p 59.

³⁵ See footnote 25 above.

³⁶ Charles Taylor, 'Atomism', in S. Avineri and A. de-Shalit (eds) *Communitarianism and Individualism*, p44.

³⁷ Michael Oakeshott, 'The Masses in Representative Democracy', in A. Humold (ed) *Freedom and Serfdom: An Anthology of Western Thought*, p157.

³⁸ Rawls contends that his principles of justice are neutral because '[T]he argument for the two principles of justice does not assume the parties have particular ends, but only that they desire certain primary goods. These are things that it is rational to want whatever else one wants.' *A Theory of Justice*, p253. Later Rawls is even more explicit that the principles of justice are neutral and context independent:

... the essential point is that despite the individualistic features of justice as fairness, the two principles of justice are not contingent upon existing desires or present social conditions. Thus we are able to derive a conception of a just basic

structure, and an ideal of the person compatible with it, that can serve as a standard for appraising institutions and for guiding the direction of social change. In order to find an archimedean point it is not necessary to appeal to a priori or perfectionist principles. By assuming certain general desires, such as the desire for primary social goods, and by taking as a basis the agreements that would be made in a suitably defined initial situation, we can achieve the requisite independence from existing circumstances. - p263.

The origin of Rawls's 'original position' then is unequivocally the notion that moral agreement can be founded on something internal to each individual that is not arbitrary by determining that there are some things individuals must want, whatever else they want. Philippa Foot in *Vices and Virtues* (Oxford, Blackwell, 1978) offers a convincing account of the origins of just such an argument. See *Vices and Virtues*, p122.

³⁹ Bob Brecher in *Getting What You Want?*, chapter 3 sees Rawls's attempt to establish a compelling theory justice as based upon the a claim about human nature, i.e. our good consists in getting as much of what we want as is reasonably possible. See particularly, pp66-7.

⁴⁰ For example, communitarians such as Charles Taylor, *Sources of the Self* (Cambridge University Press, Cambridge, 1992), Part I; and Michael Sandel in 'The Procedural Republic and the Unencumbered Self,' *Political Theory* 12 (February 1984), pp81-96; and even specifically liberal writers such as Kymlicka in *Multicultural Citizenship* and Galston in 'Value Pluralism and Political Liberalism', *Report from the Institute for Philosophy and Public Policy*, Volume 16, No. 2, Spring 1996. <http://www.puaf.umd.edu/ipp/galston.htm> 30/11/97 who are concerned with group and minority rights. It is a critique that Alasdair MacIntyre also makes from a neo-Aristotelian standpoint in *After Virtue* Second Edition, chapter 17.

⁴¹ For a further discussion of Rorty's use of conservative arguments see Justin Cruickshank, "Ethnocentrism, Social Contract Liberalism and Positivist-Conservatism: Rorty's Three Theses on Politics" in *Res Publica* (6) 2000, pp1-23.

⁴² Richard Rorty, *Philosophy and the Mirror of Nature*, pp389-394; Oakeshott, *Rationalism in Politics*, pp124-5.

⁴³ See, for example, Michael Sandel, *Liberalism and the Limits of Justice*, especially the conclusion.

⁴⁴ Michael Oakeshott, *Morality and Politics in Modern Europe* (Yale University Press, New Haven & London, 1993) p84.

⁴⁵ *ibid.* p85.

⁴⁶ *ibid.* p84.

⁴⁷ This position also explains why a liberal writer on multiculturalism such as Will Kymlicka, whilst ostensibly defending diversity, is in fact defending diversity only within the liberal paradigm and only for those people who actually recognise themselves as individuals on the liberal model of the individual. Yet this is precisely the only task liberal theorists can perform. See Kymlicka, *Multicultural Citizenship* (Oxford University Press, Oxford, 1995).

⁴⁸ Oakeshott, *Rationalism in Politics*, p123.

⁴⁹ *ibid.* pp123-4.

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